Approved March 21, 2012

COLORADO BOARD OF HEALTH
MEETING MINUTES
February 15, 2012

NOTE: These minutes are a summary of the proceedings and motions of the February 15, 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 February 15, 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; 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 January 18, 2012 as written.

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

None.

Request for Approval of Funding Recommendations: Colorado HIV and AIDS Prevention Grant Program

Staff Comments: Richard Weinert, Planning Unit Coordinator/CHAPP Program Coordinator, STD/HIV Section, and Ralph Wilmoth, Section Chief, Disease Control and Environmental Epidemiology Division, presented the funding recommendations, as described, in detail, in the memorandum/packet dated February 6, 2012.

Mr. Weinert remarked that the twenty-one projects recommended for continued funding are meant to fill a significant number of service gaps, which currently exist, in the state regarding medically accurate HIV and AIDS prevention and education. He pointed out that the recommendations, totaling $1,696,353, are available for contracts during FY 2012/2013.

Ms. Mulch suggested that the department, rather than an outside entity, complete the evaluation component. She emphasized that having an internal evaluation process would promote consistency and provide the department an opportunity to expand programs based on evidence-based evaluations. Dr. Urbina stated that he agreed with the observation and he remarked that a meeting with the division to discuss this issue is forthcoming.

> **MOVED** by Ms. Mulch, seconded by Mr. Schlabs, to approve the FY 2012-2013 funding recommendations for the Colorado HIV and AIDS Prevention Grant Program, as presented, with the exception of the Pueblo City and County Health Department grant in the amount not to exceed $1,642,141 as presented.

MOTION CARRIED UNANIMOUSLY

> **MOVED** by Ms. Mulch, seconded by Mr. Schlabs, to approve the FY 2012-2013 funding recommendation for the Colorado HIV and AIDS Prevention Grant Program, for the Pueblo City and County Health Department grant in the amount not to exceed $54,212 as presented.

MOTION CARRIED UNANIMOUSLY (Dr. Nevin-Wood recused)

Discussion/Request for Rulemaking Hearing: Proposed amendments to 5 CCR 1005-4, Newborn Screening

Staff Comments: David A. Butcher, Director, Laboratory Services Division, presented the proposed amendments and asked the Board to schedule a public rulemaking hearing on April 18, 2012. He mentioned that the proposed language revises the procedures for sample collection and delivery to the laboratory, changes the specimen collection time from seventy-two hours to forty-two hours and, updates language to make the rule easier to understand.

There were some questions and discussion regarding the change in specimen collection time, the timing requirements of different screenings, the ability for the rural communities to comply with the proposed changes and the program evaluation process.

> **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing on April 18, 2012, to consider proposed amendments to 5 CCR 1005-4, Rules, and Regulations pertaining to Newborn Screening.

Petition for declaratory order pertaining to the definition of dialysis treatment clinics

Ms. Osthus provided the Board with a copy of the Declaratory Orders Procedures adopted in 1982. She pointed out that the last time a petition for a declaratory order was received by the Board was in the early 1990s. Ms. Osthus asked Ms. Weaver, the Board's legal counsel, to review the process and to discuss the steps the Board should take regarding the petition for a declaratory order pertaining to 6 CCR 1011-1, Chapter XV, Dialysis Treatment Clinics.

Ms. Weaver stated that the Board does have formal procedures concerning declaratory orders (6 CCR 1014-1) and she encouraged the Board to discuss the next steps. She suggested that the Health Facilities & Emergency Medical Services Division review the petition and provide feedback to the Board. She also stated that she would like an opportunity to determine if the request, in fact, requires a statutory change.

There were various questions, comments, and discussion regarding the issues raised by the petition, including the intention of the petition. Mr. Schlabs noted that the Administrative Procedures Act also allows a person to petition for a regulatory change and expressed concern that the declaratory order process should not supplant that regulatory process. Additional discussion focused on whether to request the petitioner and the staff to provide an informational briefing prior to the Board taking any formal action. The Board asked Ms.

Weaver to research the viability of the petition. Ms. Mulch recommended that the Board discuss updating the procedures for declaratory orders at a future meeting.

> **By UNANIMOUS CONSENT**, the Board scheduled a consideration of petition for a declaratory order on March 21, 2012.

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

Jennifer L. Weaver, First Assistant Attorney General, reported that the Board of Health is presently not involved in any litigation.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1009-7, Detection, Monitoring and Investigation of Environmental and Chronic Disease, Regulation 1, List C-Blood Lead Level Testing

Staff Comments: Meredith Towle, MPH, Occupational Health and Safety Surveillance Program, Colorado Department of Public Health and Environment, requested that the Board adopt the proposed amendments to change the test result parameters associated with laboratory and physician reporting of elevated blood lead levels (BLL) in adults over the age of eighteen. The proposal would change the reportable level from 25 µg/dL to 10 µg/dL.

Ms. Towle explained that elevated BLLs, in adults could damage the nervous, reproductive, cardiovascular, and gastrointestinal systems. She stated that adult blood lead concentrations as low as 10 µg/dL may increase blood pressure, decrease brain function, decrease kidney function and harm fetal development. She pointed out that lead enters the body through respiration or ingestion.

She remarked that the department is the only source of population-based data for this condition available to the public health programs. She added that 2009 surveillance data indicated that increased BLLs were found in both the work setting and the recreational setting.

Ms. Towle remarked that amending Colorado's rules to require reporting of adult BLLs levels of 10 µg/dL would allow the Occupational Health and Safety Surveillance (OHSS) Program to conduct follow-back surveillance to monitor statewide trends in accordance with the Centers for Disease Control and Prevention (CDC) recommendations. She remarked that the additional case investigation allowed through this broader reporting requirement will result in improved understanding of the epidemiology of adult occupational lead poisoning in the state.

Ms. Towle responded to various questions regarding the proposed amendments, which included the requirements established by the U.S. Occupational Safety and Health Administration (OSHA), the importance of obtaining additional data, the significance of educating the public about the additional risk associated with exposure to lead, and the feedback resulting from the stakeholder process.

Public Comment

Michael Kosnett, MD, MPH, University of Colorado Denver, testified in support of lowering the threshold of laboratory reporting from 25 µg/dL to 10 µg/dL. He remarked that research shows that low lead exposure levels once thought to be acceptable are potentially dangerous and have a negative impact on public health.

> **MOVED** by Ms. Sowinski, seconded by Dr. Stanley, to adopt the proposed amendments to 6 CCR 1009-7, Detection, Monitoring and Investigation of Environmental and Chronic Disease, Regulation 1, List C, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED (8-1 Dr. Mehler opposed)

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1007-1, Radiation Control, Part 7 – pertaining to Use of Radionuclides in the Healing Arts

Staff Comments: James Jarvis, M.S., Sr. Health Physicist, Radiation Program, Hazardous Materials and Waste Management Division provided a background summary of the regulations and an overview of the significant changes in the proposal. Mr. Jarvis stated that the proposed amendments focus on radiation safety. Specifically the proposal does the following: a) eliminates the requirement for a physician to be an Authorized User on the (radioactive materials) license to perform the final interpretation of tests and scans involving radioactive material; b) eliminates the requirement for an Authorized User physician to, upon request, be physically "available" at the licensed facility within 1 hour; c) establishes a threshold for when a patient must be given instructions on reducing the dose to other individuals encountered after the patient's release from being administered radioactive materials; d) mandates that a licensee establish a Radiation Safety Committee (RSC) when only one type of therapy is used at the facility; e) requires quality control (QC) testing for diagnostic imaging equipment; and f) modifies language to maintain consistency with federal regulations.

Mr. Jarvis discussed the stakeholder process and provided clarification regarding the proposed changes pertaining to the Authorized User requirements.

> MOVED by Ms. Sowinski, seconded by Mr. Schlabs, to adopt the proposed amendments to 6 CCR 1007-1, Radiation Control, Part 7, Use of Radionuclides in the Health Arts, to include striking the word "unsealed" on page 7, line 3150, 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, MD, MPH

Dr. Urbina thanked the Board for their hard work, enthusiasm, and dedication. He acknowledge the time commitment involved for Board members to prepare for rulemaking hearings to ensure they understand the information presented to them in order to determine the best course of action.

He briefly discussed legislative items and stated that environmental programs may experience funding reductions due to budget cuts at the federal level. He mentioned that he has conducted site visits at seventeen hospitals in an effort to gain a better appreciation of the challenges faced by these institutions. He provided a brief overview of "Beforeplay", a campaign aimed at reducing unintended pregnancies in Colorado. He stated that the campaign targets the 18 to 29 year-old age group and seeks to initiate more conversation about sexual health and family planning through an interactive website, social media events, and statewide advertising.

Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus reminded the Board to provide her with any feedback, pertaining to the Board's proposed procedural rules, to her by next week.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Chapter II, General Licensure, Part X – pertaining to annual flu immunization requirements

Staff Comments: Rachel Herlihy, M.D., M.P.H., Chief, Immunization Section, Disease Control & Environmental Epidemiology Division, explained the rational for the proposed changes to 6 CCR 1011-1, Chapter II, General Licensure, Part X, Annual Flu Immunization requirements.

Dr. Herlihy remarked that vaccines have virtually eliminated a generation's personal

experience with many vaccine preventable diseases such as polio and measles. She pointed out that vaccinations are often a victim of their own success and that these days hospitalized patients do not have to worry about contracting polio or measles from their health care worker because virtually all health care workers are immunized against these diseases. She pointed out that on the rare occasion that a patient does catch polio or measles from a health care worker it is headline news and viewed as an unacceptable event.

Dr. Herlihy stated that, nationally, only 64% of health care workers are currently immunized for influenza. She emphasized that influenza vaccination of health care workers is an opportunity to protect the vulnerable, the young, and the elderly from unnecessary risk and even death.

She commented that in February 2011 Senator Boyd and Representative Massy considered legislation pertaining to influenza vaccination of health care workers. However, after some discussion it was determined that the department was better suited to spearhead the project. She added that in March of 2011 the department initiated the stakeholder process, which consisted of several stakeholder meetings to solicit feedback from every stakeholder group that could be identified. She pointed out that the initial draft of the proposed amendments changed substantially based on input from stakeholders.

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division discussed the proposed language. She noted that the proposal includes: a) requiring that facilities providing acute or long-term nursing care should ensure that its healthcare workers receive an annual influenza vaccination or wear a mask when in direct contact with patients during flu season; b) requiring that facilities that do not provide acute or long-term nursing care perform an assessment of their particular circumstance and adopt a written policy regarding influenza vaccination of its healthcare workers; c) exempting certain healthcare entities that meet vaccination targets; and d) requiring that each licensed healthcare facility provide the department with an annual report regarding its employee influenza vaccination rate.

Ms. Schoder remarked that the proposed language was developed to allow facilities the opportunity to develop policies that best meet individual circumstances and to allow healthcare entities to reach the 90% vaccination goal with incremental increase over several years. She stated that the proposed language is being placed in the general licensure rules to create consistent requirements across the state among the various types of facilities.

Ms. Schoder discussed recent procedures adopted by the Centers for Medicare and Medicaid (CMS), which will require hospitals and ambulatory surgical centers (ASCs) to report influenza vaccination rates of their healthcare personnel to the National Healthcare Safety Network (NHSN) starting in October 2013. She remarked that if facilities fail to begin reporting influenza vaccination information in 2014 they would lose federal funds. She added that the department is aligning their regulations in an effort to avoid reporting duplications for the facilities who report to NHSN.

Ms. Schoder responded to various questions regarding the different types of individuals who come in direct contact with patients and why these individuals were not required to be vaccinated.

Public comment:

The following persons testified in opposition to the proposed amendments: Melissa Nelson-Osse, HealthOne Hospitals; Ginny Brown, Vice President, Colorado Hospital Association; Pati Thomas; Jay Moskowitz, Quality Life Management, LLC ; Vineta Campau, Colorado Chiropractic Association; Stacy Dietz, R.N.; Tami Kendall, Administrator, Denver Care Center; Ruth Hagen; Janet Snipes, Administrator, Holly Heights Nursing Home; Cynthia Haskell, long-term care; Arlene Miles, Colorado Health Care Association; Jeff Prystupa, Sick

without Fever; Elizabeth Blackwood; Nancy Markow; Karl Dise; Frances Ray-Dise; Bonnie Guzman; Robert Moxley, Lawyer representing vaccine injured people; Cindy Loveland, National Vaccine Injury Coalition volunteer; and Theresa Wrangham, National Vaccine Injury Coalition. The following bullets summarize the comments in opposition to the proposed amendments:

- Believes that it is unconstitutional to mandate vaccinations,
- Considers flu vaccinations unsafe,
- Believes that flu vaccinations contain known toxins,
- Questions the efficacy of flu vaccine strains,
- Considers that requiring a mask is punitive to healthcare workers and is not effective in preventing transmission of disease,
- Believes wearing a mask is not conducive to the "home" environment that facilities strive to create,
- Believes that the rules should contain religious, personal and medical exemptions,
- Believes that the true stakeholders (healthcare workers) were not engaged in the rulemaking process,
- Considers the rules a violation of religious freedom,
- Believes that the proposed amendments violate the Colorado Open Records Law, the Administrative Procedures Act, Title VII of the Civil Rights Act and the Americans with Disabilities Act,
- Believes that the rules expose a large population to harm to provide a benefit to a small population,
- Concerned that the rules will be more onerous than CMS regulations

The following persons testified in support of the proposed amendments: Steve Perry, M.D.; Catharine Benavidez, Hispanic Nurses; Linda Rosa, R.N.; Larry Sarner, Colorado Citizens for Science in Medicine; Mark Johnson, M.D., Institute for Science in Medicine; Aimee Bernard, Professor, CU Denver; Roberta Smith, Colorado Children's Immunization Coalition; Teri Hulett Association for Professionals in Infection Prevention & Control; Erin Suelmann, Colorado Children's Immunization Coalition; Julie Moise, Families Fighting Flu; Robert Brayden, M.D., University of Colorado.

The following bullets summarize the comments provided in support of the proposed amendments:

- Believes that the rules protect patients' health and improve their safety,
- Considers vaccinations as the most effective way to prevent infection,
- Believes that vaccinations are the first defense of an outbreak
- Believes that the response to the volunteer immunization program has failed to increase participation,
- Vaccination will improve employee absenteeism,
- Economic cost savings,
- Healthcare workers have an obligation to protect their patients

<u>Board Discussion:</u>

Board discussion focused on: a) personal and religious exemptions; b) use of mask in long-term care facilities; c) exemptions for healthcare entities meeting the vaccination targets; d) the need to create consistency among all facilities that must comply with state regulations; and e) the challenge of balancing individual healthcare workers freedom of choice and protecting Coloradoans from a public health perspective.

> MOVED by Mr. Schlabs, seconded by Ms. Mulch, to adopt the proposed amendments to 6 CCR 1011-1, Chapter II, General Licensure, Part X, Annual Flu Immunization Requirements, with the following changes: page

1, line 32 and 33, should read "have individual contracts with the health care entity, physicians with staff privileges and allied health professionals with privileges", and on page 2, line 8, delete " ,paid or unpaid" , along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED (7-1 Ms. Martinez opposed)

This meeting adjourned at approximately 3:20 p.m.