

Approved March 16, 2011

COLORADO BOARD OF HEALTH

MINUTES

February 16, 2011

NOTE: These minutes are a summary of the proceedings and motions of the February 16, 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, 5th Floor, 4300 Cherry Creek Drive South, Denver, CO, or call 303-692-3464 to request copies.

Call to Order/Roll Call

The February 16, 2011 Colorado Board of Health meeting was called to order at approximately 10:10am at the Colorado Department of Public Health and Environment, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, Colorado, by Glenn Schlabs, president.

Members Present

In person: Philip Mehler, M.D., District 1; Laura Davis, District 2; Kindra Mulch, District 4; Glenn Schlabs, District 5; Joan Sowinski, District 6; Dr. Christopher Urbina, Executive Director and Chief Medical Officer, (ex-officio)

Via telephone: Christine Nevin-Woods, D.O., At-Large; Larry Kipe, M.D., At-Large

Members Absent:

Jeanne McGinnis, District 7

Staff Present:

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

Introductions

Mr. Schlabs introduced Dr. Christopher Urbina, the new Executive Director and Chief Medical Officer for the department. Dr. Urbina thanked the Board for their dedication and remarked that he is looking forward to working with everyone.

Approval of Minutes

BY UNANIMOUS CONSENT, the January 19, 2011 minutes were approved with minor corrections.

Public comments (regarding matters not on the agenda)

None.

Board comments (regarding matters not on the agenda)

Dr. Nevin-Woods welcomed Dr. Urbina to the department, mentioned that she has worked with him previously, and looked forward to working with him in his new capacity. Ms. Mulch requested a briefing on health care reform and its impact on public health; additionally, she suggested they discuss the frequency of updates regarding this topic. Dr. Urbina supported Ms. Mulch's request and a briefing was added to the long term agenda.

Mr. Schlabs introduced Ionita Pierre who is acquiring her master's degree in public health at the University of Colorado School of Public Health.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XVIII – Psychiatric Hospitals-pertaining to the reorganization and update of the standards of the entire chapter.

Staff Comments: Lorraine Dixon-Jones, Policy Analyst, Health Facilities and Emergency Medical Services Division, asked the Board to schedule a public rulemaking hearing on May 18, 2011.

Ms. Dixon-Jones mentioned that in 2008 the General Assembly required the department to set licensure fees for hospitals and health facilities. She pointed out that the department has been systematically updating regulatory requirements for hospitals and health facilities and that many of these regulations have not been reviewed in many years. Ms. Dixon-Jones stated that the majority of the changes update the requirements and align Chapter XVIII with Chapter IV standards that pertain to general hospitals. She also added that the department is in the process of receiving stakeholder comments and assured the Board that consensus will be achieved by May. Ms. Dixon-Jones responded to questions and suggestions from the Board regarding the proposed amendments.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on May 18, 2011 to consider proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. XVII, Psychiatric Hospitals – pertaining to the reorganization and update of the standards of the entire chapter.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter IV – General Hospitals -pertaining to general administration and care, psychiatric services, perinatal services, and pediatrics

Staff Comments: Lorraine Dixon-Jones, Policy Analyst, Health Facilities and Emergency Medical Services Division, asked the Board to schedule a public rulemaking hearing on May 18, 2011.

Ms. Dixon-Jones stated that the department has been working on Chapter IV for the last two years and that the proposed changes address additional sections. She pointed out that the perinatal section has substantive changes and that the changes in the psychiatric unit section of the chapter are meant to dovetail with the changes made in Chapter XVIII. Ms. Dixon-Jones added that stakeholders are involved in the process and that she does not anticipate any opposition.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on May 18, 2011 to consider proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. IV, General Hospitals pertaining to general administration and care, psychiatric services, perinatal services, and pediatrics.

Request for Appointment to the Tobacco Education, Prevention and Cessation Grant Program Review Committee – filling vacancy for representative of the Colorado Department of Education

Staff Comments: Karen DeLeeuw, Director, Center for Healthy Living and Chronic Disease Prevention, Prevention Services Division, stated that two applications for the representative of the Colorado Department of Education were received. She mentioned that the Colorado Department of Education provided letters of recommendation for both applicants and that the Committee had a difficult choice to make. Ms. DeLeeuw commented that after careful consideration the Review Committee recommended Melissa Colman, Director, Office of Teaching and Learning, Colorado Department of Education, to fill the vacancy.

MOVED by Ms. Mulch, and seconded by Ms. Davis, to appoint Melissa Colman as the Colorado Department of Education representative to the Tobacco Education, Prevention and Cessation Grant Program Review Committee.

MOTION CARRIED UNANIMOUSLY

Progress Report on Implementing Colorado’s Public Health Improvement Plan

Staff Comments: Kathleen Matthews, Director, Office of Planning and Partnerships, reminded the Board that in 2008 the General Assembly, through the Public Health Act (Act), required specific entities to work together to reorganize the local governmental public health system, define the duties of local public health agencies, define roles for the State Board of Health (BOH) and local boards of health, and establish a collaborative five year planning cycle.

Ms. Matthews said that the Board’s responsibilities included setting minimum qualifications for county and district health directors, defining core services and quality standards, determining the formula for allocating moneys to county and district health agencies; ensuring the development of a comprehensive statewide public health improvement plan (PHIP), and reviewing county and district public health agency plans. She focused the

remainder of her presentation on the core services aspect and specifically talked about achievements and upcoming goals.

Dr. Urbina, co-chair, Public Health Steering Committee, commented on the direction of the department concerning the PHIP, and he emphasized the importance of state and local health departments aligning their goals and efforts in order to meet the objectives outlined in the PHIP.

Ms. Matthews and Dr. Urbina responded to various questions from the Board.

A copy of Ms. Matthews's PowerPoint presentation is available by contacting Jamie Thornton at jamie.thornton@state.co.us

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

Dr. Urbina remarked how impressed he has been with the dedication shown by the department staff. He recently shared his guiding principles with the department and stated that he will be discussing those principles in more detail as the department moves forward in meeting its commitments to local public health agencies and the community. He encouraged the department to continue its good work and build upon past experiences. Dr. Urbina discussed the importance of transparency and reviewed Governor Hickenlooper's FY 2010-11 and FY 2011-12 budgets with the Board. He responded to questions from board members regarding the department's budget in terms of the general fund and plans regarding additional state and federal budget cuts.

Dr. Urbina provided a brief overview of the Sodium Summit Conference held today in Englewood, Colorado. He mentioned that the conference was sponsored by the Prevention Services Division and funded by the federal Centers for Disease Control and Prevention. He remarked that national experts from various industries were invited to address sodium intake and the impact it has on public health, specifically heart disease and stroke.

Legislative Update, Karin McGowan, Director, Policy, External Affairs and Planning

Ms. McGowan stated that Governor Hickenlooper's budget recommendations include drastic cuts to the Amendment 35 funds (tobacco tax). She discussed SB 11-162, concerning the suspension of cigarette tax rebates to local government; SB 11-021, concerning the removal of term limits on water and wastewater facility operators certification board; and HB 11-1281, concerning health care professional loan forgiveness programs administered by the primary care office in the department. Ms. McGowan commented that there are many new legislators this session and that the department is working closely with them. Ms. McGowan responded to various questions and comments concerning the General Assembly.

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

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

CCHI v. BOH

- The rulemaking record was forwarded to the district court on January 24, 2011
- CCHI's opening brief is due March 7, 2011

LaGoy v CDPHE

- The answer brief was received on February 15, 2011
- A request for extension of time to file a reply brief was filed

Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus reminded the Board that the March meeting will last all day due to a full agenda that includes 13 rulemaking hearings. She asked board members to block the entire day on their calendars so they could attend the entire meeting. She mentioned the possibility of conducting the April meeting via teleconference and stated that she would follow up later.

Ms. Osthus suggested scheduling work sessions in the near future to continue discussing the Board's process and procedures, and another to discuss ex parte communications. She announced that the Governor's Office of Boards and Commissions recently hired a director and a deputy director. She said that she anticipates Board

member appointments in the near future and that a new member orientation would be necessary. She encouraged the Board to consider having a retreat in the fall.

Dr. Kipe announced that he would not be re-applying for membership to the Board due to the departure of his business partner; however, he stated that he would try to continue to participate until a replacement has been found.

Legislation affecting the Medical Marijuana Registry Program (S.B. 10-109 and H.B. 10-1284) and Program Update

Staff Comments: Jennifer Weaver, First Assistant Attorney General introduced Josh Urquhart, Assistant Attorney General, Health Care Unit.

Mr. Urquhart outlined the roles and responsibilities of the Colorado Department of Public Health and Environment (department) and the Department of Revenue (DOR) regarding HB 10-1284 and SB 10-109 pertaining to the medical use of marijuana. He emphasized that neither department has any authority over the other department; however, both departments are working together in an effort to promote transparency and efficiency.

He explained that the department's primary responsibilities, by way of the Board of Health (BOH), focus on regulations associated with the purchase of medical marijuana. He stated that the BOH votes on regulations regarding patients, caregivers, and physicians. He specifically discussed rules in connection with issuing identification cards, creating and maintaining a confidential registry, verifying medical information, and governing communications with law enforcement officers and agencies.

Mr. Urquhart explained that DOR's jurisdiction, through the Medical Marijuana Enforcement Division (MMED), pertains to the commercial aspects of the regulations and creates rules to license dispensaries, offsite cultivation operations, and infused product manufacturers. He stated that DOR is also responsible for collecting sales tax on medical marijuana sold at dispensaries and is required to inspect dispensaries to ensure compliance with state and federal regulations. He stated that MMED is a law enforcement division and as such has the authority to communicate with other agencies. He provided an overview of the difference between mandatory and permissive rules, and stated that both departments have these types of rules associated with their regulations.

He remarked that the proposed data exchange is in the initial phase and he believes that it is premature to comment on something that is not concrete. He pointed out that legal notification requirements would be based on the data being shared, and reminded the Board that the statute and the Colorado Constitution are clear that the information contained in the registry is confidential. He emphasized that all participants contemplating the data exchange understand that only non-personally identifying information would be available from the registry.

Mr. Urquhart mentioned that the purpose of the data exchange is to assist DOR in meeting their regulatory obligations in the most economical and efficient method, for both departments, by sharing information already contained in the department's registry. He noted that the data exchange is permissible but not mandatory and that the Board may issue rules concerning the exchange but is not required to do so. Mr. Urquhart responded to questions from Board members.

Board Comments/Discussion

Ms. Osthus advised the Board that Dan Hartman, Director, Medical Marijuana Enforcement Division, Department of Revenue, was available to answer any questions that the members may have.

Board member questions directed to Mr. Hartman included: a) what is the MMED's ability to perform their job without the data exchange between the departments; b) what is their experiences working with other databases and registries; and, c) what is the target date for database implementation and data exchange.

Mr. Hartman replied that discussions regarding the possibility of data sharing between the departments focused on the desire to increase efficiencies within state government by avoiding the duplication of efforts. He pointed out that the department's registry already contains information that DOR requires which will help them enforce regulations pertaining to medical marijuana centers. He emphasized that DOR's intent is to obtain data that is allowed by the Colorado Constitution and would permit DOR to validate statistical information they already have.

He acknowledged that DOR would be able to enforce regulations without the data exchange; however, it would not be as efficient as having the data exchange in place.

Mr. Hartman mentioned that DOR does not have a registry; however, they do possess several databases for licensing businesses and individuals working in those businesses. He pointed out that the databases are confidential and that the information contained in those databases are subject to the Colorado Open Records Act requirements. He emphasized that DOR is continuing to develop and improve the current database systems that will allow a smooth transition as they move forward with the regulations pertaining to medical marijuana centers.

Mr. Hartman remarked that DOR is committed to enriching their systems to ensure reliability before working with other departments. He mentioned that there is no deadline regarding the data exchange between DOR and the department.

Staff Comments: Bob O’Doherty, Division Director, Center for Health and Environmental Information and Statistics, summarized security measures associated with registries under the purview of the department. Mr. O’Doherty told the Board that all computer systems used in the department involve managing sensitive data to various degrees. He pointed out that access to information is directly related to specific job duties. He stated that while a system may have a large range of data, an authorized individual would only have access to information that is required to perform his or her job. He mentioned that the security measures used by the department are required by HIPAA and recommended by the National Institute of Standards and Technology. He emphasized that no security breaches have occurred since the 2001 implementation of the medical marijuana computer system.

Ron Hyman, State Registrar and Director, Office of Vital Statistics and Medical Marijuana Registry, advised the Board that the Registry has identified the following three goals: a) resolve and prevent future backlogs pertaining to processing applications; b) finish processing the backlog of change orders within thirty days; and c) reduce the backlog of phone calls and e-mail inquiries.

Mr. O’Doherty and Mr. Hyman responded to questions regarding computer breaches, change of addresses, and the priority level regarding the data exchange with DOR.

Consideration of Petition for amendments to 5 CCR 1006-2, Medical Use of Marijuana- pertaining to privacy and security

Laura Kriho, Director, Cannabis Therapy Institute (CTI) asked the Board to schedule a public rulemaking hearing to consider proposed rules pertaining to patient privacy and security regarding the medical marijuana registry.

Ms. Kriho emphasized that the primary reason for the proposed rules is to protect the confidentiality of the department’s medical marijuana registry. She pointed out that the major concern regarding the registry is a potential policy change relating to sharing information in the registry. Ms. Kriho pointed out that any change in policy with regard to data sharing may compromise the protected information contained in the registry. She also said that a breach involving the registry could result in lasting negative consequences for medical marijuana patients, for example, the loss of employment, the loss of health care, and the loss of their home.

Ms. Kriho presented the proposed rules to the Board and reminded them that Mr. Hartman testified that DOR does not need any information contained in the registry.

Board Questions/Discussion

Board questions, comments and further discussion ensued regarding the importance the Board places on patient confidentiality; the responsibility and oversight of the three departments responsible for medical marijuana regulations; and the preliminary discussions between the departments pertaining to actions required to do their jobs.

The Board concluded that the department and Board have met the constitutional and statutory requirement to provide a confidential registry and they have not received any proposals to replace the current medical marijuana registry.

The petition to consider amendments to five CCR 1006-2, Medical Use of Marijuana, pertaining to privacy and security failed due to lack of a motion.

Election of Officers

The Board held its annual election of officers using nominating ballots and electing ballots. Laura Davis was elected president of the Board, and Christina Nevin-Woods was elected vice-president of the Board. By unanimous consent, the Board elected Dr. Urbina, Executive Director and Chief Medical Officer, Department of Public Health and Environment, as Secretary of the Board.

Meeting Adjourned at 1:35 p.m.