



COLORADO BOARD OF HEALTH
Minutes for Wednesday, January 15, 2014
Approved February 19, 2014

Colorado Department of Public Health and Environment
Sabin-Cleere Conference Room, Bldg. A, 1st Floor
4300 Cherry Creek Dr. South, Denver, CO 80246

Colorado Department
of Public Health
and Environment

NOTE: These minutes are a summary of the proceedings and motions of the 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. Copies of the rulemaking documents, reports, briefings and presentations may be obtained by submitting a request to: cdphe.bohrequests@state.co.us

Y/N	Board Member Attendance
N	Christopher Stanley, M.D., District 1
Y	Laura Davis, District 2, President
N	Jill Hunsaker-Ryan, County Commissioner, District 3
N	Gary Teague, District 4
Y	Betty McLain, District 5
Y	Joan Sowinski, District 6
Y	Rick Brown, District 7
Y	Christine Nevin-Woods, D.O., At-Large, Vice President
Y	Sue Warren, At-Large
Y	Larry Wolk, MD, MSPH Executive Director, (ex-officio)

Y/N	Staff Attendance
Y	Joni Reynolds, Health Programs Director
Y	Deborah Nelson, Board Administrator
Y	Jamie L. Thornton, Program Assistant
Y	Jennifer L. Weaver, First Assistant Attorney General

Call to order/Roll call

The meeting was called to order at approximately 10:05 a.m. by Ms. Davis, Board President.

Approval of the minutes

BY UNANIMOUS CONSENT, the Board approved the December 18, 2013 meeting minutes as amended. The amendment clarified that the cost of addressing the audit findings was a factor in establishing the Medical Marijuana Registry fee structure.

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

Mr. Brown mentioned that he attended the Cancer, Cardiovascular and Chronic Pulmonary Disease Grant Program Review Committee meeting last week and he was very impressed with the Chronic Disease Surveillance Data presentation. He suggested that the presentation be included as a future Board of Health agenda item.

Dr. Nevin-Woods remarked that Dr. Wolk and Ms. Reynolds visited Pueblo City-County Health Department. She thanked them for their efforts and stated that it was a great way to bring local and state health departments together. Ms. Reynolds voiced her appreciation for these meetings and how they provide an opportunity to discuss common issues.

Committee Appointments

Ms. McLain will serve as the backup on to Governor's Expert Emergency Epidemic Response Committee. Ms. Davis thanked Ms. McLain for volunteering to serve.

Election of Officers

The Board held its annual election of officers using nominating and electing ballots. Laura Davis was elected President of the Board, and Dr. Christine Nevin-Woods was elected Vice-President of the Board. By unanimous consent, the Board elected Dr. Wolk, Executive Director and Chief Medical Officer, as Secretary.

Rule-making Hearing

6 CCR 1014-5, Office of Health Equity – HB13-1088

Mauricio Palacio, M.S., Office of Health Equity Director, presented the proposed amendments that were initially discussed with the Board on November 20, 2013. Mr. Palacio stated that the proposed amendments create efficiencies and better align programmatic rules with House Bill 13-1088. Mr. Palacio remarked that the amendments change the name of the office and the program's review committee in addition to providing clarity and direction to more effectively administer and implement the program. Mr. Palacio responded to Board questions regarding the motivation for making changes, appointments to the commission, sustainability, the criteria for cultural competence, and the role and authority of the Board of Health. Ms. Nelson mentioned that the Department is preparing a side-by-side comparison of A35 Grant programs to assist the Board in distinguishing the requirements for each grant program. **MOVED** by Ms. Davis, seconded by Mr. Brown, to adopt the proposed amendments to 6 CCR 1014-5, Office of Health Equity, along with the statement of basis and purpose, specific statutory authority and regulatory analysis with the following amendments: 1) line 104, after "Board," insert "of Health"; line 136, after "submitted in" insert "an electronic"; line 156, add the "o" to "methodology"; line 161, capitalize "specific"; and line 170, after "evaluation" insert "plan". **MOTION CARRIED UNANIMOUSLY.**

Rule-making Hearing

6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Part 3 – Palliative Care

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments that were initially discussed with the Board on November 20, 2013. Ms. Schoder stated that, currently, palliative care standards are only addressed in Chapter 21, Hospices. She remarked that hospices are no longer the only health care entities to provide or aspire to provide palliative care. She noted that the proposed amendment will ensure that all health care entities have access to a uniform definition of palliative care and that uniform standards exist for health care entities that choose to provide such care. Ms. Schoder remarked that the Division worked with stakeholders for approximately a year to develop the recommended changes. She pointed out that the definition of palliative care in these regulations is identical to the definition in the hospice rule with the exception to the last line. She stated that the difference adds additional clarification for less experienced entities. Ms. Schoder emphasized that the Department is not requiring that palliative care be provided; only that, if a health care entity chooses to provide this type of care, they must comply with these standards. Mr. Brown asked why the term "health care entity" is used in some chapters while "health care facility" is used in others. Ms. Schoder stated that "health care facility" is an outdated term as the Division now supports entities such as Home Care Agencies. Ms. Schoder asked the Board to approve the proposed amendments.

Public Comments

Tom Hill, Regulatory Policy Director, Colorado Hospital Association, testified in support of the proposed amendments and said that he was pleased with the Department's efforts and stakeholder process.

Cathy Wagner, Board of Directors, Colorado Center for Hospice and Palliative care, expressed her appreciation of the Department's collaborative approach and stated that she supports the proposed amendments.

Board Action

Ms. Davis expressed her gratitude for the hard work and dedication of the Department and the stakeholders to discuss concerns and resolve issues prior to presenting the amendments to the Board. She stated that this approach resulted in a robust proposal and allows the Board to make decisions with confidence. **MOVED** by Mr. Brown, seconded by Ms. Sowinski, to adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Part 3 – Palliative Care, along with the statement of basis and purpose, specific statutory authority and regulatory analysis. **MOTION CARRIED UNANIMOUSLY**

Rule-making Hearing

6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Performance Incentive

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments that were initially discussed with the Board on November 20, 2013. Ms. Schoder remarked that the proposed amendments were necessary to comply with House Bill 12-1294 which directed the Department to create a performance incentive. She mentioned that Home Care Agencies have a similar incentive and that under the standard in the rule about 10% of entities would qualify for the 10% performance incentive. She commented that the amendments were discussed, in depth, at various stakeholder meetings resulting in consensus. Ms. Schoder remarked that policy guidance has been drafted and should be published prior to the effective date should the amendments be adopted. She mentioned that staff participated in LEAN events and training to ensure consistency in applying these changes.

Ms. Warren asked why health facilities that have significant deficiencies are still eligible for the incentive. Ms. Schoder responded that it was mandated in statute. Ms. Davis reminded the Board that the facility would need to do all of the items, collectively, under that section in order to be eligible. Mr. Brown mentioned that the safety component no longer falls under this Department's purview and questioned if it should be included in this language. Mr. Brown also asked if the Department that is responsible for the safety component would be participating in the onsite inspection in order to establish that the facility met the criteria. Randy Kuykendall, Health Facilities and Emergency Medical Services Division Director, remarked that Life Safety Codes, transferred to the Department of Public Safety (DPS) and that this is a very specific function regarding building safety as it applies to health care. He noted that the transfer did not remove the Department's responsibility for other areas of patient safety that may be attached to buildings but are not in the same arena. Mr. Kuykendall stated that the Department works closely with DPS. Further discussion, questions and comments ensued regarding the statute, examples of harm that would disqualify a facility from the incentive, and the importance of a facility meeting all of the outlined criteria in order to be approved for the incentive. Ms. Reynolds congratulated the Division on its exceptional work on these rules. The strong relationship the Division has with the facilities is apparent. **MOVED** by Ms. Warren, seconded by Ms. McLain, to adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Performance Incentives, along with the statement of basis and purpose, specific statutory authority and regulatory analysis. **MOTION CARRIED UNANIMOUSLY**

Rule-making Hearing

6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, General Hospitals, Part 5, Section 5.2.3.4 - Access to Patient Medical Records

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments that were initially discussed with the Board on June 19, 2013. Ms. Schoder also distributed a one page historical chronology regarding this regulation. She corrected an error in the rulemaking memo to the Board by stating that the case of Colorado Consumer Health Initiative (CCHI) v. Colorado Board of Health was decided on a motion of summary judgment and did not go to trial. Ms. Schoder remarked that the most recent court order stated that the Board of Health and the Department may strike all the language regarding copy cost fees from the rule as long as the amended language requires health care facilities to comply with the Health Insurance Portability and Accountability Act (HIPAA). She remarked that the proposed language removes any specific references to copy cost fees and requires licensed health facilities to comply with applicable state and federal law. She provided a brief synopsis to demonstrate the complexity of creating a copy cost fee structure and discussed how other states address copy cost fees. Ms. Schoder responded to Board questions regarding electronic records, the Board's authority to enforce "reasonable" fees, the distinction between patient and personal representative, and national trends.

Ms. Weaver reminded the Board that the District Court ordered the Department to conduct a study to support the rates previously set by the Board. She commented that the parties in the litigation agreed, due to the constraints of conducting a study, to seek an amended order to strike all language associated with copy costs. Ms. Davis asked Ms. Weaver if the proposed language complies with the amended order. Ms. Weaver confirmed that it does. Mr. Kuykendall suggested that the Department not engage in fee setting because it is beyond the Department's purview and stretches the Division's area of expertise.

Public Comments

Joanna Thies, Perkins Coie, representing CCHI, stated that CCHI supports the proposed amendments and believes that patients and their representatives should not be charged for obtaining copies of their records. Ms. Thies raised concerns regarding the definition of "designated representative" and the possibility that copy cost fees will be passed on to patients. She stated that a statutory change may be needed to adequately address this issue. She remarked that while this is the best that can be done at this time she does anticipate that this issue will be revisited. Mr. Brown asked Ms. Thies if the proposed amendments achieved her goal and if she anticipates an increase in copy cost if they are adopted. Ms. Thies stated that the amendments are a win for patients; however, it is unknown what the impact will be on others. She went on to say that if there is going to be a change in statute she would like to see a true cost study performed that focuses on the actual cost of making copies. Ms. Warren asked Ms. Thies if she had any perspective on overcharging nationwide. Ms. Thies indicated she did not have data but looking at the businesses involved and their profits, she believes overcharging is occurring.

Board Action

Ms. Davis remarked that this issue is complex and goes beyond the scope of the Board and the Department. She stated that there are many factors to consider when setting fees and that she agrees that a study should be done; however, it is important to identify the proper entity with the proper authority. Ms. Schoder reminded the Board that under the rule a patient can review their records and have their records transferred for the purpose of continuing care, at no cost. Dr. Wolk discussed how "meaningful user" and electronic record access impact the analysis as well. **MOVED** by Ms. Warren, seconded by Ms. McLain, to adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Access to Patient Medical

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

MOTION CARRIED UNANIMOUSLY

2008 Colorado Consumer Health Initiative Petition

Ms. Nelson reminded the Board that, in 2008, they decided to postpone considering the petition pending the outcome of litigation. She stated that the Administrative Procedures Act (APA) requires the Board to consider the petition during this rule-making hearing. She remarked that in light of the discussion and the adoption of the proposed rules, the Board needs to decide if further action is required. She asked the Board if they would like to accept the petition, resulting in a rule-making hearing, or deny the petition. **MOVED** by Ms. Warren, seconded by Mr. Brown, to deny the 2008 Colorado Consumer Health Initiative petition to amend 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Part 5, Section 5.2.3.4. **MOTION CARRIED UNANIMOUSLY**

Standing Reports

Executive Director Report, Larry Wolk, Executive Director

Dr. Wolk discussed a variety of topics which included the Refugee Clinic addressing its backlog, the School Based Health Program's increased enrollment, the Crisis Connection Program referral rate, the Colorado Immunization Information System interfaces that embrace 300 practices, an update on the progress of the website redesign and the upcoming Air Quality Control Commission oil and gas hearing. He also provided flu statistics and updates on the Medical Marijuana Program budget request for research grants, legislation to address some of the audit findings, and improved Department processes. Ms. Warren asked why it was taking so long to obtain an AG opinion to which Dr. Wolk and Ms. Weaver reviewed the progress that has been made as well as the need to be thorough prior to issuing the formal opinion. Dr. Nevin-Woods appreciated the Department's efforts to increase evidence-based practices in the Medical Marijuana Program. Dr. Wolk responded to questions relating to fracking and the Clean Air and Water Act. Dr. Wolk and Ms. Davis discussed the complexity of fracking and the Department's role within that complexity.

Attorney General's Report, Jennifer Weaver, First Assistant Attorney General, Health Care Unit, Legal Counsel

Ms. Weaver had no updates.

Administrative Updates, Deborah Nelson, Board of Health Administrator

Ms. Nelson remarked that the finalized Tobacco Monitoring Settlement Report was distributed to Board members and that Rich Hall, Budget Director, is scheduled to present a follow-up briefing. She stated that comments were received, and included with this month's documents, for a future Radiation Control rulemaking hearing and advised Board members to contact her if they have questions. She noted that the Preventative Health and Health Services Block Grant review has been scheduled and she asked for a volunteer to shadow Laura Davis, for succession planning, as she has been working with program staff on these matters. Ms. Warren volunteered. Ms. Nelson advised the Board that the citizen's Medical Marijuana Petition has been posted on the Board's website to ensure that the public is informed that the Board is accepting written comments only. She let the Board know that the petition will be on the February agenda for consideration by the Board.

Legislative Report

Karin McGowan, Deputy Executive Director and Director of Community Relations, updated the Board regarding the Department's legislative initiatives and other bills of interest to the Department. She remarked that the Department has not taken a position on any matters this early in the session. She encouraged the Board to contact her if they have feedback or if they are interested in specific topics.

Ms. McGowan mentioned that major topics of discussion for the General Assembly include: the Medical Marijuana Registry cash fund balance as it relates to research; data sharing for contractors and law enforcement as it pertains to

the Medical Marijuana Registry, medical marijuana oversight of physicians and caregivers; and Medical Marijuana Registry contract employees. She discussed the Department's legislative agenda which includes: dedicated evidential breath alcohol testing funds to enable on-going upgrades to the equipment; community drinking and wastewater grants to address community needs after the flooding and meet nutrient requirements; prescription drug take-back liability; the Department's ability to charge to de-identify data, and; Department budget requests to restore the waste tire fund, the hazardous substance fund and recycling grant dollars.

Ms. McGowan also commented on SB14-016, concerning the ability of certain health care facilities to provide emergency services outside of a hospital setting; SB14-018, concerning the prohibition against furnishing nicotine products to persons under eighteen years of age; SB14-029, concerning the establishment of a paint stewardship program for the environmentally sound disposal of postconsumer architectural paint; SB14-050, concerning financial assistance in Colorado hospitals; SB14-051, concerning access to records relating to the adoption of children; SB14-073, concerning the state income tax credit for the environmental remediation of contaminated land in the state; SB14-088, concerning the creation of a suicide prevention commission. She also mentioned HB14-1037, concerning enforcement of laws against designer drugs; HB14-1045, concerning the continuation of the breast and cervical cancer prevention and treatment program; HB14-1049, concerning offenses against an unborn child; HB14-1054, concerning restricting access by minors to artificial tanning devices; HB14-1058, concerning voluntary labeling for food that does not contain genetically engineered material; HB14-1064, concerning distribution of severance tax revenue to a local government that limits oil and gas extraction; and finally HB14-1090, requiring a supermajority of the General Assembly to approve a statutory fee increase.

Request for Rule-making Hearing

6 CCR 1011-1, Chapter IV, Hospital Infection Control Committees – Dr. Nevin-Woods Chair

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented a request for a rulemaking hearing to change the requirement that a Hospital Infection Control Committee meet on a monthly basis. Ms. Schoder stated that the proposed change updates the regulation so that it reflects standard industry practice. She remarked that the current rule requires hospital infection control committees to meet monthly. She commented that hospitals and their infection control committees have become extremely efficient in this area and that monthly meetings are no longer necessary to maintain the health, safety and welfare of patients. She said that the proposed amendment reduces the required meeting frequency to quarterly. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider proposed amendments to 6 CCR 1011-1, Chapter IV, Hospital Infection Control Committees. The rulemaking hearing is tentatively scheduled for March 19, 2014 and Dr. Nevin-Woods will chair the rulemaking hearing.

Request for Rule-making Hearing

6CCR 1014-10, Local Public Health Funding – Rick Brown Chair

Kathleen Matthews, Director, Office of Planning and Partnerships, Community Relations Division, presented a request for a rulemaking hearing to approve the funding formula designed to support Local Public Health Agencies that provide the required core public and environmental health services. She stated that this was the last Board of Health rule that needed to be promulgated under the *Public Health Act*. She reminded the Board that they previously approved the funding formula under the pilot of the funding formula. Ms. Matthews responded to questions relating to the formula, potential issues with the equation, and proposed language relating to allocation and criteria. Ms. Matthews invited the Board to participate in a webinar that was being provided to local public health agencies. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider proposed amendments to 6 CCR 1014-10, Local Public Health Funding. The rulemaking hearing is tentatively scheduled for March 19, 2014 and Mr. Brown will chair the rulemaking hearing.

Request to Approve Tobacco Education, Prevention and Cessation Grant Program Review Committee Funding Recommendation for CDC Tobacco Prevention Advertisement

Jill Bednarek, MSW, Center for Healthy Living and Chronic Disease, Prevention Services Division, asked the Board to approve a funding recommendation for Fiscal Year 2013-14 (July 2013 – June 2014) for a total of \$125,000. Ms. Bednarek stated that the proposed funding recommendation allows the program to purchase more than 50 television, radio, and digital ads. She remarked that advertising campaign would support tobacco prevention efforts across Colorado and that the cost of advertisements is greatly reduced due to the program's ability to negotiate with the original producers of the material. Mr. Brown asked if this request is procedurally separate from the normal grant application process. Ms. Bednarek stated that this request is part of the overall grant budget and that the program is looking at how it brings its requests to the Board to ensure the Board is informed while acting within its statutory authority. **Moved** by Mr. Brown, seconded by Dr. Nevin-Woods, to approve the funding request for media buys. **MOTION CARRIED UNANIMOUSLY.**

The meeting was adjourned at approximately 1:30 p.m.