

Approved July 17, 2013

COLORADO BOARD OF HEALTH
MEETING MINUTES
June 19, 2013

These minutes are a summary of the proceedings and motions of the June 19, 2013 meeting of the Colorado Board of Health. The complete and accurate record is the audio recording of the meeting. You may obtain copies of the recorded meeting, rulemaking documents, reports, briefings, and presentations by submitting a written request to cdphe.bohrequests@state.co.us or by calling the Board of Health Office, at 303-692-3464.

Call to Order/Roll Call

The June 19, 2013 Colorado Board of Health meeting was called to order at approximately 10:10 a.m. at the Colorado Department of Public Health and Environment, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, Colorado, by Dr. Nevin-Woods, vice president.

Members Present

Christopher Stanley, M.D., District 1; Jill Hunsaker-Ryan, County Commissioner, District 3; Gary Teague, District 4; Betty McLain, District 5; Joan Sowinski, District 6; Rick Brown, District 7, (11:50 a.m.); Christine Nevin-Woods, D.O., At-Large; Sue Warren, At-Large.

Members Absent:

Laura Davis, District 2.

Staff Present:

Ann Hause, Interim Board Administrator and Director of Legal and Regulatory Compliance; Karin McGowan, Interim Executive Director; Joni Reynolds, Health Programs Director; Jamie L. Thornton, Program Assistant; Jennifer L. Weaver, First Assistant Attorney General, legal counsel.

Approval of Minutes

BY UNANIMOUS CONSENT, the Board approved the April 17, 2013 meeting minutes, as amended.

New Board Member Introduction

New Board members Jill Hunsaker Ryan, Gary Teague, and Betty McLain, introduced themselves to existing Board members and Department staff. They provided general background information as it relates to their work experiences and interest in becoming Board of Health members.

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

None.

Request for Appointment to the Cancer, Cardiovascular Disease and Chronic Pulmonary Disease Grant Program Review Committee

Averil Strand, RN, MSN, Larimer County Public Health Director/Chair, Cancer, Cardiovascular and Pulmonary Disease Review Committee (the Review Committee), requested the Board approve the Review Committee's recommendation to fill the vacancy for a representative of the rural interest in regard to the prevention, early detection, and treatment of cancer, cardiovascular disease, and chronic pulmonary disease.

Ms. Strand offered the following name for the Board's consideration.

- Dawn James, MSN, APRN, CNS, CDE, Deputy Director of Public Health, Kit Carson County Health and Human Services

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MOVED by Dr. Stanley, seconded by Ms. Sowinski, to appoint Ms. James to the Cancer, Cardiovascular Disease and Chronic Pulmonary Disease Grant Program Review Committee.

MOTION CARRIED UNANIMOUSLY (Mr. Brown was absent from the vote)

Ms. Strand asked the Board to appoint a new Board of Health representative to the Review Committee since Laura Davis's term as the Board's representative will end on July 31, 2013. Ms. Strand extended a special thank you to Ms. Davis for all of her hard work and commitment to the Review Committee. Mr. Brown had previously expressed an interest in serving as the Board of Health representative and was appointed.

Request for Appointment to the Tobacco Education, Prevention and Cessation Grant Program Review Committee

Jennifer Ludwig, Eagle County Public Health Director/Chair, Tobacco Review Committee, (the Review Committee), requested the Board approve the Review Committee's recommendations to fill vacancies for a representative of a statewide physician association and a representative of the University of Colorado Health Sciences Center with expertise in evaluation.

Ms. Ludwig offered the following names for the Board's consideration.

- Joseph Craig, MD, Pediatrician, Primary Care Chief at Ken Caryl, Colorado Permanente Medical Group – statewide physician representative
- Katherine James, PhD, Assistant Professor, University of Colorado Denver – University of Colorado Health Sciences Center, with expertise in evaluation

MOVED by Ms. Sowinski, seconded by Dr. Stanley, to approve the recommendations of Joseph Craig and Katherine James to the Tobacco Education, Prevention and Cessation Grant Program Review Committee.

MOTION CARRIED UNANIMOUSLY (Mr. Brown was absent from the vote)

Ms. Ludwig asked the Board to appoint a new Board of Health representative to the Review Committee since the term of the current representative, Joan Sowinski, ended on March 31, 2013. Ms. Warren volunteered to be the Board of Health representative and was appointed.

Ms. Ludwig remarked that Ms. Sowinski was a phenomenal member and thanked her for her commitment and hard work.

Informational Briefing: Tobacco Grant Program - Amendment 35 Audit Results

Celeste Schoenthaler, Healthy Living Unit Manager, Prevention Services Division, provided a summary of the 2012 Office of the State Auditor (OSA) performance audit of Amendment 35 grant programs.

Ms. Schoenthaler remarked that in 2009, a fiscal emergency was declared by the legislature which reduced programmatic funding from \$24 million per year, to about \$5- \$7 million per year, for three consecutive years. She stated that in 2010, the Tobacco Education, Prevention and Cessation Grant Program Review Committee (the Review Committee), discussed funding strategies to be applied during the fiscal emergency. She mentioned that the Review Committee considered drastically reducing funds for all grantees or funding select proposals to achieve targeted health outcomes with the limited funding available. She stated that the Review Committee determined that it would be best to fund evidence based programs addressing policy change at the local level, and she reminded the Board that they previously approved those funding recommendations.

Ms. Schoenthaler remarked that the OSA performance audit questioned the statutory use of Amendment 35 funds for tobacco policy work and recommended a legal opinion from the Attorney General. She said that the OSA obtained a legal opinion from the Office of Legislative Legal Services (OLLS) and presented the information to the Legislative Audit Committee (LAC). She stated that OLLS found that state law allows policy work to reduce youth access to tobacco and secondhand smoke exposure in low-income,

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multi-unit housing, but does not allow policy work to reduce secondhand smoke in communities and on campuses.

Ms. Schoenthaler noted that as a result of the audit and subsequent legal opinion, the Department can no longer fund secondhand smoke policy work at the organizational, worksite, college, or city or county levels, as of July 1, 2013. She said that the Department will continue to fund multi-unit housing policy work with a focused emphasis on low-income housing.

She remarked that as a result of the audit the Department and the grantees were being challenged to protect Coloradans from secondhand smoke. She commented that while the Department recognizes the work as evidence-based and a best practice in tobacco control, the formal legal interpretation of the statute must be followed.

Ms. Schoenthaler stated that the Department plans to execute fiscal year 2013-14 contracts on schedule, and will include a stop work order for secondhand smoke deliverables and activities no longer allowed under the grant program. She emphasized that the staff will work with each affected agency to initiate contract amendments to modify scopes of work and budgets. She pointed out that staff will prioritize the process for agencies most severely affected and will work with affected agencies to substitute allowable secondhand smoke education work.

Ms. Sowinski and Dr. Nevin Woods thanked Ms. Schoenthaler for her work in the tobacco program and wished her well in her new position at the King County, WA, Public Health Department.

Discussion/Request for a Rulemaking Hearing: 6 CCR 1009-4, Ophthalmic Ointment in Newborn Infants – Repeal regulations specifying ophthalmic treatment

Melanie Mattson, Section Chief, Sexually Transmitted Infections/HIV, Disease Control and Environmental Epidemiology Division, presented a request for a rulemaking hearing to consider repealing rules pertaining to Ophthalmic Ointment in Newborn Infants.

Ms. Mattson remarked that the proposed amendments repeal this outdated rule in which the Colorado State Board of Health officially names and approves Tetracycline ophthalmic ointment and Erythromycin ophthalmic ointment as a prophylaxis to be used in treating the eyes of newborn infants. She commented that the change is necessary in order to comply with House Bill 12-1058 which repealed statutes requiring the department to name, approve, and provide free of charge, a prophylaxis to be used in treating the eyes of newborns. She stated that under the new statutory provisions, the health care provider in charge of the birth is required to treat an infant with a prophylaxis that is in accordance with the current medical standard of care.

Ms. Mattson responded to questions regarding standard of care and rule enforcement.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on August 21, 2013, to consider proposed amendments to 6 CCR 1009-4, Ophthalmic Ointment in Newborn Infants.

Discussion/Request for a Rulemaking Hearing: 6 CCR 1009-9, Reporting, Prevention, and Control of AIDS, HIV Related Illness, and HIV Infection – CD4 Counts

Melanie Mattson, Section Chief, Sexually Transmitted Infections/HIV, Disease Control and Environmental Epidemiology Division, presented a request for a rulemaking hearing to consider proposed amendments to 6 CCR 1009-9, Reporting, Prevention, and Control of AIDS, HIV Related Illness, and HIV Infection. Ms. Mattson remarked that the proposed amendments update language pertaining to HIV testing requirements, reporting requirements related to CD4 test results, and information sharing requirements between contracted agencies, health care providers administering direct HIV related services, and the Department.

Ms. Mattson responded to questions regarding; a) stakeholder input; b) purpose of CD4 testing; c) impact of additional reporting requirements; d) training requirements; e) counseling requirements; and f) operational standards.

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BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on August 21, 2013, to consider proposed amendments to 6 CCR 1009-9, Reporting, Prevention, and Control of AIDS, HIV Related Illness, and HIV Infection.

PUBLIC RULEMAKING HEARING: 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter IV, General Hospitals – Comply with HB 10-1229 regarding verbal orders

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments to Standards for Hospitals and Health Facilities, Chapter IV, General Hospitals which were initially discussed with the Board in April.

Ms. Schoder remarked that the changes are necessary in order to conform to the Centers for Medicare and Medicaid (CMS) rules and HB 10-1229. She stated that the current language has been stricken and she reviewed the proposed language which was added, verbatim, with the exception of four words. She stated that no public comments were received regarding the proposed amendments and she asked the Board to approve the proposed changes.

Public Comments

None.

MOVED by Ms. Sowinski, seconded by Ms. Warren, to adopt the proposed amendments, to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter IV, General Hospitals, regarding verbal orders in compliance with HB 10-1229, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED UNANIMOUSLY (Mr. Brown was absent from the vote)

PUBLIC RULEMAKING HEARING: 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapters II, General Licensure Standards; Chapter III, General Building and Fire Safety; Chapter IV, General Hospitals; Chapter V, Long Term Care Facilities; Chapter VI, Acute Treatment Units; Chapter VII, Assisted Living Residences; Chapter VIII, Facilities for Persons with Developmental Disabilities; Chapter IX, Community Clinics and Community Clinics and Emergency Centers; Chapter X, Rehabilitation Centers; Chapter XI, Convalescent Centers; Chapter XV, Dialysis Treatment Clinics; Chapter XVIII, Psychiatric Hospitals; Chapter XIX, Hospital Units; Chapter XX, Ambulatory Surgery Centers; Chapter XXI, Hospice; and Chapter XXII, Birth Centers Chapters II – XI, XV, and XVII – XXII – Comply with HB 12-1268

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments to Standards for Hospitals and Health Facilities, Chapters II – XI, XV, and XVII - XXII, (HB 12-1268), which were initially discussed with the Board in April. She reminded the Board that the only licensed health facilities that are not affected by the proposed amendments are those that do not provide health care in their own facilities, such as home care agencies and outpatient hospice.

Ms. Schoder testified that HB 12-1268, removes the Department's authority to establish or enforce standards relating to building or fire codes. She remarked that the bill specifies that all functions pertaining to the administration, inspection and enforcement of any building construction or fire code standards be transferred to the Department of Public Safety (DPS), Division of Fire Prevention and Control (DFPC) effective July 1, 2013, with the caveat that the U.S. Department of Health and Human Services (DHHS) approve the transfer. Approval from DHHS was necessary because many health care facilities are federally certified.

Ms. Schoder commented that the Department and DPS convened a joint task force to ensure that all aspects of the transition were carefully considered and carried out in the best interests of facilities, patients/residents, and stakeholders. She noted that the task force met weekly since the March 1st to identify and resolve potential issues such as the sharing of data and to ensure both federal reporting requirements and state licensure provisions are met. She added that the majority of these processes will be in place by July 1st and that it is anticipated that collaboration will continue throughout the implementation period in order to identify as many opportunities as possible to improve the efficiency and effectiveness of the life safety code process in Colorado.

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Ms. Schoder remarked that the proposed amendments are primarily deletions of the department's authority over building construction and life safety code issues. She pointed out that the legislation removed the department's authority as of July 1, 2013, to establish or enforce such regulations even if conforming regulatory amendments were not adopted.

Ms. Schoder noted that while HB 12-1268 did not specifically remove the Board's authority to grant waivers' pertaining to life safety codes, the department believes, based on other provisions of the legislation, that the Board will no longer have the authority to grant such waivers. Ms. Schoder stated that this interpretation is based on the fact that the Board's authority is only over programs within the Department.

Ms. Schoder mentioned that the majority of the revisions contain language referencing *Guidelines for Construction and Equipment of Hospitals and Medical Facilities* published by the American Institute of Architects. She remarked that, during the development of the proposed changes, the division was encouraged to reference the 2010 edition of *The Guidelines for Design and Construction of Health Care Facilities, published by Facilities Guidelines Institute (the Guidelines)*. She noted that the new guidelines were developed with assistance from the U.S. Department of Health and Human Services, and that the Guidelines address issues such as infection control. She remarked that the guidelines would create a safety net in the unlikelyhood that the emergency rules adopted by DPS became invalid.

Ms. Schoder responded to questions regarding: a) DHHS's approval to transfer the regulations; b) the management of the environmental components of the regulations, e.g., size of doors, laundry services, and infection control; and c) the comparison of Colorado's building and fire regulations to those of other states.

Public Comments

Joseph Price, Director of Architecture, Fresenius Medical Care, and Kim Tecca, Director, Regulatory Affairs, Fresenius Medical Care, discussed the conflicting regulations between the 2008 CMS revised regulations, the 2009 Colorado state revised regulations, and the 2012 CMS final rule as it pertains to the 2000 Edition of Life Safety Code (LSC) of the National Fire Protection Association. (NFPA) – Chapter 20 for new dialysis facilities and Chapter 21 for existing dialysis facilities.

The Board encouraged Mr. Price and Ms. Tecca to contact the Department of Public Safety to ensure that they are part of the stakeholder process and that their concerns are addressed.

Rob Sontag, Life Safety Code Manager, Department of Public Health and Environment, stated that the draft proposal for the DPS emergency rulemaking hearing includes adopting the 2012 CMS regulations. He stated that a public meeting regarding the emergency rulemaking hearing was held on June 14th. He remarked that that the proposed emergency rules have been published and that written comments are being received.

Board Comments and Questions

The Board discussed the necessity for a rule review in the near future and they talked about the steps that the Department will take to ensure that the concerns raised by Mr. Price and Ms. Tecca are communicated to the appropriate DPS staff.

MOVED by Dr. Stanley, seconded by Ms. Warren, to adopt the proposed amendments, to 6 CCR 1011-1, Standards for Hospitals and Health Facilities; Chapters II, General Licensure Standards; Chapter III, General Building and Fire Safety; Chapter IV, General Hospitals; Chapter V, Long Term Care Facilities; Chapter VI, Acute Treatment Units; Chapter VII, Assisted Living Residences; Chapter VIII, Facilities for Persons with Developmental Disabilities; Chapter IX, Community Clinics and Community Clinics and Emergency Centers; Chapter X, Rehabilitation Centers; Chapter XI, Convalescent Centers; Chapter XV, Dialysis Treatment Clinics; Chapter XVIII, Psychiatric Hospitals; Chapter XIX, Hospital Units; Chapter XX, Ambulatory Surgery Centers; Chapter XXI, Hospice; and Chapter XXII, Birth Centers, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED UNANIMOUSLY

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Executive Director and Chief Medical Officer Report – Joni Reynolds, Health Programs Director for Chris Urbina, MD, MPH

Ms. Reynolds updated the Board on recent events concerning the Laboratory Services Division and she discussed the appointments of several interim division directors.

Ms. McGowan announced that Dr. Urbina recently submitted his letter of resignation and that June 28th will be his last day as the Department's Executive Director and Chief Medical Officer. She commented that the Governor's office has begun the search for a new executive director and that she will provide the Board with an update as soon as she has additional information.

Dr. Chris Urbina thanked the Board members for their service and stated that he had very much enjoyed working with Board during his tenure. The Board members expressed their appreciation to Dr. Urbina for his service and leadership.

Public Health Act Update - Kathleen Matthews, Director, Office of Planning and Partnerships, Community Relations

Ms. Matthews requested that the Board approve the waiver of minimum qualifications for Colleen Zufelt to serve as the Rio Blanco County Director of Public Health. She also requested that the Board approve the substitution of minimum qualifications of Yvonne Long to serve as the Garfield County Public Health Agency.

Ms. Matthews and Tsering Dorjee, Public Health Nurse Consultant, Office of Planning and Partnership, responded to comments and questions regarding training, mentoring, and monitoring individuals who are approved for a waiver or substitution.

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

Ms. Weaver stated that there is nothing new to report on the litigation front. She provided a brief overview of the Boyer and Todd v. Hickenlooper and Colorado Board of Health case and, the Colorado Consumer Health Initiative (CCHI) v. Colorado Board of Health case for the benefit of the new members.

Administrative Business – Ann Hause, Interim Board Administrator

Ms. Hause remarked that the search for a new Board of Health Administrator is under way and that she anticipates having the position filled within the next couple of months. She also thanked the new members for their willingness to serve and encouraged them to call her if they have any questions.

Meeting adjourned at approximately 1:35 p.m.