

Approved December 21, 2011

**COLORADO BOARD OF HEALTH
MEETING MINUTES
November 16, 2011**

NOTE: These minutes are a summary of the proceedings and motions of the November 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 November 16, 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; Sue Warren, At-Large.

Members Absent:

Philip Mehler, M.D., District 1; Christopher Stanley, M.D., District 7; and Chris Urbina, M.D. M.P.H., Executive Director/Chief Medical Officer (ex officio)

Staff Present:

Karen Osthus, Board Administrator; Jamie L. Thornton, Program Assistant; Jennifer L. Weaver, First Assistant Attorney General, legal counsel; and Joni Reynolds, R. N., Public Health Programs Director (sitting in for Dr. Chris Urbina)

Approval of Minutes

BY UNANIMOUS CONSENT, the Board approved the September minutes as written.

Public comments regarding matters not on the agenda

Robert Chase, Colorado Coalition for Patients and Caregivers, asked the department to make an unequivocal statement that other state agencies would not have access to any information within the medical marijuana registry. Mr. Chase stated that it violated the Colorado Constitution to share information with law enforcement agencies.

Timothy Tipton, Rocky Mountain Caregivers Cooperative, asked the department to focus efforts on recovering the \$9 million diverted from the medical marijuana registry fund in 2010 to the general fund.

Brooke Gehring, Live Green Group, suggested that patients receive temporary registry cards at the time the physician provides the recommendation. She stated that a temporary card would ensure that centers would be able to serve patients while the department is processing their application.

Board comments regarding matters not on the agenda

Ms. Davis commented that she, Ms. Sowinski, Ms. Warren, and Commissioner Martinez represented the Board at the annual joint meeting with the Air Quality Control Commission on October 20. She remarked that it was an excellent meeting and was very informative.

Discussion/Request for a Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Chapter XXVI, Home Care Agencies

Staff Comments: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments and asked the Board to schedule a public rulemaking hearing pertaining to home care agencies on January 18, 2012.

Ms. Schoder reminded the Board that rules regarding the licensure of home care agencies (HCAs) were originally adopted in 2009 and she pointed out that the required two-year fee cap recently expired. She

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commented that the department was required to provide a report specifying the direct and indirect costs associated with the administration of the program. She noted that the report revealed that HCA revenue exceeded the department's spending authority for 2011 and would continue to rise based on existing data. She added that, based on the report, the department requested the HCA advisory committee (Committee) to re-evaluate the current fee structure and make a fee adjustment recommendation.

Ms. Schoder stated that the Committee unanimously recommended implementing a flat licensure fee. She remarked that the proposed amendments include performance incentives and financial penalties. She pointed out that the current fee structure was based on the number of employees the HCA has (with data derived from workers compensation audits) and that the department and the HCAs agree that the audit is not an effective means of assessing the HCA fee structure.

Ms. Schoder stated that the proposed amendments reflect the recommendations of the department and the Committee.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on January 18, 2012 to consider the proposed amendments to 6 CCR 1011-1, Chapter XXVI, Home Care Agencies.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Chapter II, General Licensure, Part X – pertaining to annual flu immunization requirements

Staff Comments: Margaret Huffman, Public Health Nurse Consultant, Disease Control and Environmental Epidemiology Division, discussed the background of the proposed amendments. She stated that the proposed rules allow health care facilities to address immunization requirements for healthcare workers (HCWs) in facility policy. Ms. Huffman stated that this approach allows facilities to address their individual needs based on the specific population served.

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the proposed amendments and asked the Board to schedule a public rulemaking hearing on February 15, 2012. Ms. Schoder stated that in the spring of 2011, the department began investigating measures that could be taken to decrease or stop the transmission of the seasonal influenza virus among HCWs. A task force that consisted of local infection control specialists, representatives from various licensed healthcare entities, and other stakeholders, convened and embarked on developing a method to address the issue. She pointed out that the proposed amendments consist of a new section that requires licensed health care entities to establish and maintain a policy regarding the annual influenza immunization of its HCWs. She remarked that the written policy would require that healthcare workers have either proof of immunization or documentation for an exemption from immunization.

Ms. Schoder noted that she is currently working with the Prevention Services Division on policies for acute care hospitals and ambulatory surgical centers. Based on a number of questions from the Board, Ms. Huffman and Ms. Schoder agreed to provide the Board with an informational briefing on immunizations in January 2012.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on February 15, 2012 to consider the proposed amendments to 6 CCR 1011-1, Chapter II, General Licensure, Part X, annual flu immunization requirements.

PUBLIC RULEMAKING HEARING: Proposed amendments to 5 CCR 1006-2 Medical Use of Marijuana, pertaining to indigence standards, fee reductions, and conditioned and restricted physician licenses

Staff Comments: Ann Hause, Director, Office of Legal and Regulatory Affairs, remarked that the proposed changes to the annual application fee, the indigence standard, and the physician's license definition comply with the statutory changes made by House Bill 11-1043 and make the rules consistent with the current statutes.

Ms. Hause commented that, over the last several years, the medical marijuana registry (MMR) has experienced a rapid increase in applications. She stated that although the department anticipates further expansion, the data used to project the program's direct and indirect costs supports a decrease in the annual application fee from \$90 to \$35.

Ms. Hause remarked that with the passage of House Bill 11-1043 the indigence standard was set at 185% of the federal poverty guidelines and that applicants must prove their status by submitting a state tax return

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certified by the Department of Revenue (DOR). She pointed out that applicants who have not previously filed or who are not required to file a state tax return may file a late return with DOR in order to meet the requirement for obtaining an MMR card. She mentioned that DOR confirmed that there is no fee to file online and there is no impediment for applicants to file a state tax return even if they are not required to do so for other purposes.

Ms. Hause remarked that the statute now clarifies that a physician "in good standing" for purposes of the MMR post July 1, 2011, means having a license that does not have restrictions or conditions that specifically prohibit the physician from recommending medical marijuana. She noted that the proposed rules amend the definition of "in good standing" to align with the state statute.

Public Comment

The following persons testified in general support of the fee decrease for the annual application: Tina Valenti, In Harmony Wellness; Toni Fox, 3-D Denver's Discreet Dispensary; Jerry Milligan, Self; Betty Aldworth, community relations representative; Robert Chase, Coalition for Patients and Caregivers; Timothy Tipton, Rocky Mountain Caregivers Coalition; Barb Visser, self; Josh Kappel, Sensible Colorado; James McVaney, disability rights advocate; Bruce Granger, Kind Love; Jackie Edwards, self; Brooke Gehring, Colorado 7 and Live Green Consulting.

The majority of the testimony focused on the reduction of the application fee, the indigence standard, and the physician requirements. However, the Board also received the following comments pertaining to other aspects of the medical marijuana program.

- Concerns about the integrity and confidentiality of the registry,
- Concerns about the backlog of applications,
- Desire for the department to increase transparency by improving communication efforts,
- Wants the Board to create policy that considers patients, and
- Requests the Board to ask the department to return the funds diverted from the program.

Board Comments/Discussion

The Board asked several questions regarding: 1) the communication issues raised during the public comment period; 2) the current backlog of applications; and 3) the process for protecting sensitive information on the application.

MOVED by Ms. Mulch, seconded by Mr. Schlabs, to adopt the proposed amendments to 6 CCR 1006-2 Medical Use of Marijuana, pertaining to indigence standards, fee reductions, and conditional and restricted physicians' license, 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 1009-2, pertaining to the Infant Immunization Program, the Vaccines for Children Program and the Immunization of Students Attending School

Staff Comments: Jamie D'Amico, RN, MSN, CNS, Public Health Nurse Consultant, and Marianne Koshak, Interim Immunization Director, Colorado Immunization Program, Disease Control and Environmental Epidemiology Division provided a summary of the proposed amendments.

Ms. D'Amico stated that the proposed language adds clarity to the Table 1 footnotes (b, f, k & 1) which provide guidance regarding specific vaccines, and a health care provider classification (advanced practice nurse) section has been included to conform with the statute.

Ms. D'Amico commented that the proposed amendments are consistent with the terms and language in statute and the recommendations issued by the Advisory Committee on Immunization Practices and the Center for Disease Control and Prevention. She pointed out that there were three stakeholder meetings and that there are no new vaccine requirements in the proposed rules.

Board questions and comments focused on: 1) the incorporation of footnotes; 2) the personal exemption waiver; and 3) the addition of "advanced practice nurse" language.

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Public Comments

None.

MOVED by Mr. Schlabs, and seconded by Ms. Sowinski, to adopt the proposed amendments to 6 CCR 1009-2, Infant Immunization Program, Vaccines for Children Program and the Immunization of Students attending School, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED UNANIMOUSLY

Request to postpone public rulemaking hearing on proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. IX, Community Clinics and Community Clinics and Emergency Centers—authorizing community clinics to become hospital off- campus locations

Staff Comments: Lorraine Dixon-Jones, Policy Analyst, Health Facilities and Emergency Medical Services Division, stated that the proposed language was originally presented to the Board in September and that a request for continuation was asked for and subsequently granted. Ms. Dixon-Jones informed the Board that the department held two informational forums due to concerns identified during the September hearing. She pointed out that stakeholders were encouraged to participate in the forums and voice any additional concerns pertaining to the proposed amendments. She added that the forum discussions focused on: 1) the impact of licensure on hospitals and safety net providers; and 2) the impact of eliminating in-patient beds in a community clinic setting.

She mentioned that the department would draft proposed language to address the issues raised during the September hearing and the two forums. She added that the department would conduct site visits and offer targeted surveys in an effort to obtain comprehensive support from all stakeholders. Ms. Dixon-Jones requested that the rulemaking be continued until March 21, 2012.

By UNANIMOUS CONSENT, the Board continued the public rulemaking hearing to March 21, 2012 to consider proposed rules pertaining to Standards for Hospitals and Health facilities, Ch. IX, Community Clinics and Community Clinics and Emergency Centers – authorizing community clinics to become hospitals off-campus locations.

Report of the Executive Director and Chief Medical Officer

Joni Reynolds, Public Health Programs Director, gave the Executive Director's report on behalf of Dr. Urbina. She updated the Board on: 1) the recent leadership retreat; 2) the modifications to the composition of the leadership team; 3) the interaction between the leadership team and the senior management team; and 4) the next steps required by the department in order to align the strategic map with all levels of the department.

Roz Bedell, Chief Operating Officer, commented that staff is excited about the tangible goals addressed in the strategic map. She stated that there is discussion regarding how best to track and share everything that is going on within the department. She added that the goal is to ensure that the department achieves the goals outlined in the strategic map and she emphasized that the department is determined to achieve those goals.

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

Ms. Matthews presented a summary of the substitutions or waivers of minimum requirements for the Park County Public Health Director and the San Juan County Public Health Director.

Ms. Matthews updated the Board on the timeline associated with the implementation of the Core Public Health Services rules as they pertain to the funding formula.

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 – cost study options pertaining to copy cost for HIPAA covered individuals are being discussed
- LaGoy v. CDPHE – in Denver District Court

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Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus commented that the Board of Health retreat, held in Burlington on October 18, was a great success. She thanked Ms. Bedell for facilitating the team building exercise and she thanked the members for their participation.

Ms. Osthus provided a draft document that outlines the values, identified by the Board, and includes a suggested implementation process. She asked the Board to review the information and she recommended that an hour-long work session, to discuss the next steps, be scheduled during the January 18, 2012 meeting.

Informational Briefing: Youth Smoking Prevention - Stakeholder Group's Recommendations

Staff Comments: Stephanie Walton, Youth Policy Coordinator, Prevention Services Division, provided an overview of the recommendations of the Youth Smoking Prevention Stakeholder Group (the Group) to prevent illegal tobacco sales to minors. Her presentation included historical information pertaining to the creation of the Group, data on current tobacco use by minors, and policy initiatives to reduce illegal tobacco sales to minors.

Informational Briefing: Update on Occupational Health & Safety Surveillance Initiatives

Staff Comments: Meredith Towle, Program Manager, Disease Control and Environmental Epidemiology Division, provided a progress report on the department's Occupational Health and Safety Surveillance Program. Her presentation included the objectives of the occupational health and safety program within the framework of public health, updated surveillance data, the ongoing efforts to enhance and expand surveillance, upcoming activities to address occupational health disparities, and stakeholder feedback regarding the program.

Meeting adjourned at 3:00 p.m.

A copy of the PowerPoint presentations and any documents associated with this meeting are available by submitting a request to [.bohrequests@state.co.us](mailto:bohrequests@state.co.us)