



**COLORADO BOARD OF HEALTH**

**Minutes for Wednesday, November 20, 2013**

Colorado Department of Public Health and Environment  
 Sabin-Cleere Conference Room, Bldg. A, 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, 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: [bohrequests@state.co](mailto:bohrequests@state.co).

Y/N	Board Member Attendance
Y	Christopher Stanley, M.D., District 1
Y	Laura Davis, District 2, President
Y	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
N	Larry Wolk, 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 10:10 a.m. by Ms. Davis, Board President.

**Approval of the minutes**

**BY UNANIMOUS CONSENT**, the Board approved the October 16, 2013 meeting minutes as amended. The amendments were to correct a couple of typos and identify Commissioner Hunsaker-Ryan as a Commissioner to acknowledge compliance with this requirement for the Board's composition.

**Public comments regarding matters not on the agenda**

None.

**Board comments regarding matters not on the agenda**

Ms. Davis remarked that the Air Quality Control Commission was very pleased with the joint meeting between the Air Quality Control Commission and the Board of Health as well as the representation of the Board of Health at the joint meeting. Ms. Sowinski voiced her appreciation for the comprehensive report regarding the flood relief activities of the State and the Department. Ms. Davis requested that the flood relief activities be presented to the Board in the near future.

**Committee Appointments**

Dr. Stanley will serve on the Tobacco Education, Prevention, and Cessation Grant Program Review Committee.

**Funding Re-allocation from the Cancer, Cardiovascular Disease and Pulmonary Disease (CCPD) Grant Program Review Committee**

Rick Brown, Vice Chair, CCPD Review Committee and Board of Health member, Ken Gershman, MD, MPH, Director, Epidemiology, Planning and Evaluation Branch and Acting Tobacco Program Manager, Prevention Services Division, and Dr. Stanley Szeffler, M.D. of the *Step Up Asthma Program* presented the request from the CCPD Grant Program Review Committee to change the funding recipient for the *Step Up Asthma Program* from National Jewish Health to the University of Colorado at Denver (UCD).

Mr. Brown remarked that the proposed change is administrative in nature and is needed because the program along with the principal investigator, Dr. Szeffler, is moving from National Jewish Health to UCD Health Sciences Center. Mr. Brown stated that by

Approved December 18, 2013

approving the request, the program, which is approximately thirty-nine percent complete, can maintain its integrity and consistency. He pointed out that the move will not impact successful completion of the program. He mentioned that the Department has reviewed the procurement guidelines and determined that the proposed change is consistent with state rules and statutes. He provided a broad overview of the program which included the goals of the program and the resources available to participants.

Dr. Szeffler stated that the program was initially an outreach program designed to understand the impact of asthma on children in the Denver Public School system and to assist nurses in their asthma education efforts. He mentioned that the program's focus has shifted from an outreach program to a case management program. He stated that efforts are ongoing to increase funding and collaborators in order to bring the program to more schools in Colorado and eventually to a national level.

**MOVED** by Dr. Stanley and seconded by Ms. Sowinski to approve the funding re-allocation recommendation from the Cancer, Cardiovascular Disease and Pulmonary Disease Grant Program Review Committee. **MOTION CARRIED UNANIMOUSLY.**

**Substitution/Waiver of Minimum Qualifications Requirements for Bent County, Public Health Director**

Kathleen Matthews, Director, Office of Planning and Partnerships, Community Relations reviewed the waiver of the minimum qualifications for the Bent Count Public Health Director.

**Rule-making Hearings:**

**CCR 1007-1, Radiation Control Part 24, Particle Accelerators and Therapeutic Radiation Machines in the Healing Arts**

James Jarvis, M.S., Sr. Health Physicist, Radiation Program, and Brian Vamvakias, Unit Leader, X-Ray Certification, Hazardous Materials and Waste Management Division presented the proposed amendments.

Mr. Vamvakias explained that the regulations are necessary to protect patients and operators from the high levels of radiation associated with machines used for cancer treatment. He remarked that the primary reasons for the proposed changes are to ensure consistency with the national framework as outlined in the *Suggested State Regulations for Control of Radiation* of the Conference of Radiation Control Program Directors, Inc. Mr. Vamvakias stated that the proposed changes include minor clerical corrections and general improvements in the regulatory program as well as the insertion of the American Association of Physicists in Medicine (AAPM) standards. He pointed out that the proposed language also includes clarification that a registered medical physicist may deviate from the AAPM standards as long as documentation is provided. Mr. Vamvakias stated that approximately 140 stakeholders were notified of the proposed changes and invited to provide feedback. Mr. Jarvis mentioned that a focus group was convened, which included three certified medical physicists and individuals who submitted comments during the comment period, to review and consider the proposed changes. Mr. Jarvis also recommended updating the statutory authority to include Section 25-11-104 C.R.S.

**Public Comments**

Mr. Steven Birnbaum, Medical Physicist, thanked the Board for the opportunity to present his comments and he testified in full support of the proposed amendments. He expressed his appreciation for the staff's great communication efforts and collaborative approach. Mr. Birnbaum stated that while he supports the recommended changes he would like to know how the Department reconciles using the recommendations provided by various task groups as regulations when the task groups themselves have specifically stated that their reports are to be used as guidelines and not regulations. In response, Mr. Vamvakias stated that the rule includes language, that the regulation applies unless it is determined by the medical physicist that it is not warranted, in an effort to achieve balance between regulation and guidance.

**Board Comments**

Ms. Davis, Ms. Sowinski and Ms. Warren remarked that it is a common practice to include industry standards in regulations, groups such as the Conference of Radiation Control Program Directors, Inc. often included "not intended to be regulations" language for liability purposes, the group's recommendations set a minimum standard, and the statute sets an expectation to align Department rules with the suggested state regulations.

**MOVED** by Ms. Sowinski, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1007-1, Radiation Control Part 24, Particle Accelerators and Therapeutic Radiation Machines in the Healing Arts, with the addition of Section 25-11-104 C.R.S. in the specific statutory authority, along with the statement of basis and purpose, specific statutory authority and regulatory

analysis, **MOTION CARRIED UNANIMOUSLY.**

**CCR 1009-9, Reporting, Prevention, and Control of AIDS, HIV Related Illness, and HIV Infection – CD4 Counts**

Melanie Mattson, Section Chief, Sexually Transmitted Infections, Disease Control and Environmental Epidemiology Division, reminded the Board that in August she was asked to convene a task force to address concerns raised by stakeholders during the initial rule-making hearing. She remarked that the meetings between the Department and the task force were very rich and beneficial for everyone involved. She pointed out that a representative from the State Attorney General's Office and the Department's Director Of Legal and Regulatory Affairs assured her and stakeholders that the Department is well within its statutory authority concerning the proposed amendments. She noted that as a result of the task force meetings a majority consensus was reached; however, there are some lingering concerns with some stakeholders regarding Regulation 3.

Ms. Mattson remarked that the rule has been modified: 1) to clarify the reporting requirement for all CD4 tests regardless of results; 2) to include current language pertaining to counseling and testing sites and HIV testing throughout Colorado; and, 3) to clarify information sharing requirements to include organizations that provide direct patient services. She responded to Board questions regarding the confidentiality protections regarding information sharing, examples of contracted agencies and expectations of other health agencies regarding patient confidentiality.

**Comments**

Ms. Barb Cardell, Chair, HIV Care and Prevention Coalition, testified in support of the proposed amendments. She remarked that the stakeholder meetings were a great process and that she was very grateful for the opportunity to work with the Department on the proposed regulations. She mentioned that consensus was reached regarding all of the concerns identified at the August meeting with the exception of the legal protection component for non-contracted health agencies. She read a letter of support signed by twenty-four supporters of the proposed amendments. She mentioned that the concerns regarding Regulation 3, Information Sharing, could be easily remedied as part of the on-going data sharing task force or by having a memorandum of understanding with non-contracted health agencies.

Mr. Arthur Powers, Managing Director of THRIVE, thanked the Board for convening the task force and for treating the community members with respect. Mr. Powers' comments focused on the new proposed language as well as his continued concerns regarding Regulation 3. He remarked that the addition of "*To the minimum extent necessary to achieve the public health purpose,*" was a great addition. He stated that including the references to Section 25-4-1404 (1) and (1)(a),(b) and (c), C.R.S. is the most significant addition to the proposed amendments because it ensures the confidentiality of the information. He mentioned that the statute refers to public health officials when addressing sharing protected information. Mr. Powers discussed his concerns regarding the interaction between the Department and "other" health agencies that do not have contracts/agreements with the Department and are not considered public health officials.

Ms. Kari Hartel, Children's Hospital, testified in support of the proposed rules. She remarked that she does not have any concerns regarding Regulation 3 and the Department providing information with other health agencies. She pointed out that coordination of care would increase by allowing the Department to share their information with other health care providers. She stated that she was happy with the outcome of the recent meetings and that it was a good process.

**Comments**

Ms. Mattson stated that the primary purpose of Regulation 3 is for the Department, as the public health official, to share information with direct care providers to enable the most effective and efficient care to Coloradoans living with HIV. Ms. Warren asked if insurance companies would be considered health agencies. Ms. Mattson stated that insurance companies are not considered health agencies because they do not provide direct care and therefore would not be provided with any information from the Department. Ms. Weaver remarked that she agrees with Ms. Mattson's assessment of insurance companies; additionally, she stated that the statute allows for the Department, as the public health official, to share pertinent information.

**MOVED** by Dr. Stanley, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1009-9, Reporting, Prevention, and Control of AIDS, HIV Related Illness, and HIV Infection, along with the statement of basis and purpose, specific statutory authority and regulatory analysis. **MOTION CARRIED UNANIMOUSLY**

**Requests for Rule-making Hearing:**

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

Mauricio Palacio, M.S., Office of Health Equity Director, presented a request for a rulemaking hearing to comply with House Bill 13-1088. Mr. Palacio remarked that House Bill 13-1088 modified the work of the Department regarding health disparities to include health equity, renamed the Office of Health Disparities to the Office of Health Equity, and consolidated the duties of the Minority Health Advisory Commission and the Interagency Health Disparities Leadership Council in the newly created Health Equity Commission. Mr. Palacio responded to questions from Dr. Nevin-Woods, Ms. Warren and Commissioner Hunsaker-Ryan regarding the need to update the rules, how the Department communicated grant priorities, additional targeted communities, scope of work requirements, and the Board's role in the grant process. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider proposed amendments to 6 CCR 1014-5, Office of Health Disparities. The rulemaking hearing is tentatively scheduled for January 15, 2013 and Dr. Nevin-Woods will chair the rulemaking hearing.

**6 CCR 1016-1, Nurse Home Visitor Program - Repeal**

Esperanza Ybarra, Health Services & Connections Branch Director, Prevention Services Division, presented a request for a rulemaking hearing. Ms. Ybarra remarked that effective July 1, 2013 the Nurse Home Visitor Program (NHVP) was transferred to the Colorado Department of Human Services (CDHS) pursuant to House Bill 13-1117. She stated that the Department no longer administers the NHVP and as such does not have statutory authority to promulgate rules through the Board of Health. She noted that CDHS and the Departments are working together in order to align efforts and that they anticipate a March 30, 2014 effective date. There was some Board discussion regarding the rationale for the transfer and for plans to ensure that the program and participants are not compromised during the transition period. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider the repeal of 6 CCR 1016-1, Nurse Home Visitor Program - Repeal. The rulemaking hearing is tentatively scheduled for January 15, 2013 and Ms. Warren will chair the rulemaking hearing.

**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 request for a rulemaking hearing. Ms. Schoder stated that the proposed amendments are necessary in order to provide a definition of palliative care and standards for palliative care that will apply to any licensed healthcare entity that chooses to provide palliative care. She commented that the only standards addressing palliative care are contained in Chapter XXI, Hospices. She remarked that due to changes in the health care delivery system it has become evident that hospices are not the only health care entities that provide or want to provide palliative care. She noted that the proposed amendments will ensure that all health care entities, which choose to provide such care, have access to a uniform definition and uniformed standards of care. Ms. Schoder said that the Division spent a lot of time developing this amendment with the assistance of stakeholders. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, Part 3 – Palliative Care. The rulemaking hearing is tentatively scheduled for January 15, 2013 and Ms. Sowinski will chair the rulemaking hearing.

**CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, General Licensure Standards, HB1294 – Licensure Discounts/Performance Incentives**

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division presented the request for a rulemaking hearing. Ms. Schoder remarked that the proposed amendments are necessary to comply with House Bill 12-1294 (HB1294) that directed the Department to establish a performance incentive for health facilities that meet certain criteria at the time of an onsite re-licensure inspection. She stated that the proposed amendment was discussed with the HB1294 stakeholder forum group. She pointed out that the Division is developing an internal process to ensure full and fair implementation of the proposed rule once it becomes effective. The Board discussed the impetus for the incentive and how these types of programs work in other fields. **BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing to consider proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. II, General Licensure Standards. The rulemaking hearing is tentatively scheduled for January 15, 2013 and Ms. Davis will chair the rulemaking hearing.

Approved December 18, 2013

**Executive Director Report- Joni Reynolds, Health Programs Director on behalf of Larry Wolk, Executive Director**

Ms. Reynolds remarked about ozone regulations, the next steps for the toxicology laboratory, and the hiring for the new director of the Prevention Services Division. Ms. Reynolds made the Board aware that the Department is seeking accreditation through the National Public Health Accreditation Board and provided the Board an overview of the accreditation process. The Department sought a letter of support from the Board and the Board fully supported this effort and agreed to provide a letter of support.

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

Ms. Weaver remarked that there were no updates to provide.

**Administrative Updates, Deborah Nelson, Board of Health Administrator**

Ms. Nelson remarked that there were no updates to provide.

**This meeting was adjourned at approximately 12:30 p.m.**