

COLORADO BOARD OF HEALTH
MEETING MINUTES
September 21, 2011

NOTE: These minutes are a summary of the proceedings and motions of the September 21, 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 September 21, 2011 Colorado Board of Health meeting was called to order at approximately 10:05 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

Philip Mehler, M.D., District 1(arrived 10:20 a.m.); Laura Davis, District 2; Crestina Martinez, District 3, County Commissioner; Kindra Mulch, District 4; Glenn Schlabs, District 5; Joan Sowinski, District 6 (arrived 10:20 a.m.); Christine Nevin-Woods, D.O., At-Large; Christopher Stanley, M.D., District 7; Sue Warren, At-Large; Christopher Urbina, M.D., MPH, Executive Director and Chief Medical Officer, (ex-officio).

Members Absent

None.

Staff Present

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

Approval of Minutes

There were no minutes to approve.

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

Ms. Davis requested that any material pertaining to the joint meeting of the Board of Health and the Air Quality Control Commission be provided in advance of the meeting.

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

Staff Comments: Jennifer Snyder, Director of Outgoing Grants, Prevention Services Division, presented the Tobacco Education, Prevention and Cessation Grant Program Review Committee's recommendations to fill vacancies on the Review

Committee.

She stated that the composition of the Review Committee is prescribed by the Colorado Revised Statutes §25-3.5-804 (5) (b). She added that the Review Committee followed established standard practices associated with filling committee review vacancies. There was brief discussion regarding how the positions became vacant and how the recommendations were determined.

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

- 1) **Representative of the University of Colorado Health Sciences Center who has expertise in evaluation**, J. Jackson ("Jack") Barnette, Ph.D., Associate Dean and Professor of Biometrics, Colorado School of Public Health, Aurora;
- 2) **Representative of a local public health agency**, Jennifer Ludwig, Public Health Director, Eagle County Health and Human Services, Eagle;
- 3) **Representative of the Colorado Department of Education**, Kathleen Patrick, RN, MA, NCSN, FNASN, Assistant Director, Health & Wellness Unit, Colorado Department of Education;
- 4) **Representative of a statewide nonprofit organization with a demonstrated expertise in and commitment to tobacco control**, Laura Mortimer, Health and Life Skills Program Coordinator, Boys and Girls Clubs of Metro Denver, Denver – representing the Colorado Alliance of Boys and Girls Clubs.

MOVED by Dr. Stanley, seconded by Mr. Schlabs to approve the appointments, on the Review Committee, of Dr. Barnette, representing the University of Colorado Health Sciences Center who has expertise in evaluation; Ms. Ludwig representing a local public health agency; Ms. Patrick representing the Colorado Department of Education; and Ms. Mortimer representing a statewide nonprofit organization with a demonstrated expertise in and commitment to tobacco control.

MOTION CARRIED UNANIMOUSLY

Request for Approval of Grantee: Tobacco Education, Prevention and Cessation Grant Program Review Committee regarding media services.

Staff Comments: Jennifer Snyder, Director of Outgoing Grants, Prevention Services Division, announced that this request would be postponed to a future meeting.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 5 CCR 1006-2 Medical Use of Marijuana, pertaining to indigence standards, fee reductions, and conditioned and restricted physician license.

Staff Comments: Ann Hause, Director, Office of Legal and Regulatory Affairs, summarized the proposed amendments. The proposal makes changes to the annual application fee and other departmental rules in order to comply with the statutory changes made by House Bill 11-1043.

Ms. Hause stated that the medical marijuana registry (MMR) has experienced rapid growth over the last several years. She remarked that the annual application fee has been \$90 since 2007, and that the proposed rule reduces the fee to \$35. She

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added that the proposal takes into consideration the fact that some applicants will meet the indigence standard.

Ms. Hause remarked that the passage of House Bill 11-1043 also modifies the indigence standard, and clarifies the definition of "in good standing" in the requirements for the status of a physician's license. She added that the proposed regulatory changes would make the rules consistent with the current statutes.

Ms. Hause responded to several Board questions.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on November 16, 2011 to consider the proposed amendments to 5 CCR 1006-2, Medical Use of Marijuana, pertaining to indigence standards, fee reductions, and physician licenses.

Discussion/Request for 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, Colorado Immunization Program, Disease Control and Environmental Epidemiology Division, discussed the proposed amendments to 6 CCR 1009-2, Infant Immunization Program, the Vaccines for Children Program, and Immunization of Students Attending School rules and asked the Board to schedule a public rulemaking hearing for November 16, 2011.

Ms. D'Amico stated that language has been included to add 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.

Ms. D'Amico commented that the proposed amendments are consistent with the terms and language in statute and with the recommendations issued by the Advisory Committee on Immunization Practices and the Center for Disease Control and Prevention.

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

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on November 16, 2011 to consider the proposed amendments to 6 CCR 1009-2, Infant Immunization Program, the Vaccines for Children Program and the Immunization of Students Attending School.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1014-4, Colorado Health Care Professionals Credentials Application

Presenter: George Dikeou, Chairman, Health Care Credentials Application Review Committee, requested the Board adopt the proposed amendments to the Colorado Health Care Professionals Credentials application.

Mr. Dikeou reminded the Board that the Review Committee is mandated by statute to convene at least once a calendar year to receive input from the public to

consider changes to the application. He provided an overview of the stakeholder process and furnished the rationale for the proposed changes. He emphasized that the Review Committee's intention is to avoid changes to the application unless there is strong support for such changes and that the changes do not affect the usability or functionality of the document. Mr. Dikeou pointed out that the substantive changes include: 1) reclassifying some definitions; 2) adding the word "misdemeanor"; and 3) adding a reminder to the applicant to save a completed form.

Board Comments/Discussion

There was some discussion pertaining to the ramifications and importance of including the term "misdemeanor".

MOVED by Mr. Schlabs, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1014-4, 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 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, presented the proposed amendments to Community Clinics and Community Clinics and Emergency Centers and pointed out that the proposed changes reflect the department's ongoing efforts to revise the Community Clinic licensure standards.

Ms. Dixon-Jones stated that the proposal: 1) exempts from licensure Federally Qualified Health Centers in accordance with House Bill 11-1101; 2) authorizes primary care clinics to become off-campus locations of a general hospital; 3) prohibits inpatient care in primary care clinics with limited exceptions; and 4) establishes more specific standards for community emergency centers that conduct seasonal closures or interrupt operations during a 24-hour period. She added that the proposed changes also clarify intent and reorganize the rules.

Public Comments:

Ginny Brown, Vice President of Legislative & Regulatory Affairs, Colorado Hospital Association (CHA); Gail Finley, Co-Lead, Colorado Action Coalition; Sharon Adams, Executive Director, ClinicNET; Laury Bowman, Exempla Healthcare, raised several concerns about the proposed rules. The concerns included: life safety code issues, proposed repeal of 72 hour stays in clinics, and unnecessary increased costs to facilities. There were various questions and comments from the Board and after additional discussion, the Division asked the Board to continue the hearing until the **November** 2011 meeting to allow the stakeholders and Division time to resolve some of the issues.

Request for Waiver of Building and Fire Safety Regulations: Skilled and Intermediate Health Facilities pursuant to 6 CCR 1011-1, Chapter II, Section 4.106 for Hillcrest Assisted Living, Loveland, CO to allow use of 3rd floor as part of building's licensed space.

Staff Comments: Rob Sontag, Program Manager, Life Safety Code, Health Facilities and Emergency Medical Services Division, provided an overview of the waiver request as described, in detail, in the memorandum/packet dated August 31, 2011.

Mr. Sontag commented that Hillcrest Assisted Living (Hillcrest), was originally licensed in 2010 and currently occupy the first two floors of a three-story building. He mentioned that Hillcrest is seeking a waiver to license the space on the third floor. He stated that the Life Safety Code (LSC) requires that the facility be built in accordance with the National Fire Protection Association's (NFPA) 5000 Building and Safety Code for minimum construction requirements.

He pointed out that the space in question contains combustible structural elements, which would not normally be accepted in a three-story building, under the department's currently adopted (2003) regulations; however, it is acceptable in a two-story building.

Mr. Sontag stated that the facility submitted its plans to the department for the required plan review late in the construction process, which resulted in the department's inability to identify and work with the facility concerning the code deficiencies prior to construction. He noted that the deficient construction type was identified during plan review and; that several options were discussed with the facility in an effort to allow the use of the third floor as an Assisted Living Residence ("ALR") in compliance with the LSC.

He stated that since an acceptable solution had not been identified by the time construction ended on the building, Hillcrest chose to seek licensure as an ALR on the first two floors and to manage the third floor as apartments of their adjacent existing senior living business. Mr. Sontag stated that the department recommends that the Board deny the waiver request because it does not provide adequate fire and/or life safety protection to the residents or staff of the facility. He added that the facility's allegation that the third floor could be recognized as a separate Small Residential Board and Care is not consistent with LSC Section 32.4.14.

Public Comment: Chris Owens, co-owner, Hillcrest Assisted Living, remarked that the owners agree with the facts as presented; however, they believe that the functional issues lead them to a different conclusion for the safety and health of the residents. He pointed out that Hillcrest has always been compliant with all regulations and argued that if the third floor were licensed as an ALR, the residents would actually be safer because of the additional oversight in an ALR as opposed to independent housing.

David Edwards, co-owner, Hillcrest Assisted Living, stated that there were architectural delays, which prevented them from submitting the plans to the department. He remarked that the design would comply with all regulations and that this is a common sense issue. He added that the objective is to have a safer facility.

MOVED by Ms. Sowinski, seconded by Dr. Stanley, to deny the request for waiver of the NFPA 5000, Chapter regulations.

MOTION CARRIED UNANIMOUSLY

Board Discussion re: Resolution on Dissolvable Tobacco Products (Board action only)

Prior to the discussion, Ms. Davis reminded the public that the discussion was for Board action only and that public comment would not be taken. A draft of the Colorado State Board of Health Resolution on R.J. Reynolds Camel Sticks, Strips, and Orbs was distributed. The Board read the draft resolution and discussed: 1) the importance of obtaining unanimous consent; 2) the unintentional consequences of asking the Colorado General Assembly to consider imposing the tobacco excise tax on dissolvable tobacco products; and 3) the rationale for terminology used.

MOVED by Dr. Nevins-Woods, seconded by Mr. Schlabs, to adopt the Colorado State Board of Health Resolution on R.J. Reynolds Camel Sticks, Strips, and Orbs.

MOTION CARRIED UNANIMOUSLY

Reports of the Executive Director and Chief Medical Officer, Chris Urbina, MD, MPH

Dr. Urbina updated the Board on: 1) the *Listeria* outbreak; 2) the transfer of the early childhood development programs from the department to the Department of Health Care Policy and Finance; and 3) the department's 5-year strategic plan.

Public Health Act Update, Shannon Rossiter, JD, MPH, Public Health Planner, Office of Planning and Partnerships

Ms. Rossiter remarked that the Office of Planning and Partnerships received feedback from the stakeholder process and is currently working on incorporating many of the suggestions into the proposed rule concerning core public health services. She commented that the Public Health Improvement Steering Committee, Colorado Association of Local Public Health Officials (CALPHO), and the Health and Human Services Committee at Colorado Counties Inc., reviewed and supported the proposed changes. She added that Jackie Brown, Director, Prowers County Public Health & Environment, and Rick Ritter, Executive Director, Otero County Health Department, would be presenting the proposed rules at the October 19 Board of Health meeting.

Attorney General's Report-status update on litigation involving the State Board of Health Jennifer Weaver, First Assistant Attorney General, Health Care Unit

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

- CCHI v. BOH – Denver District Court upheld a portion of the rule that applied to personal representatives.
- LaGoy v. CDPHE – Court of Appeals dismissed the case as moot and it is now back in Denver District Court.

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Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus discussed the logistics of the October 18 retreat and the October 19 regular monthly meeting being held in Burlington, Colorado.

Informational Briefing: Evidence-Based Home Visiting Models

This agenda item postponed until November 16, 2011.

Meeting adjourned at approximately 2 p.m.