



COLORADO

Department of Health Care
Policy & Financing

Medical Services Board

MEMORANDUM

TO: Brenda LaCombe, Medical Services Board President
CC: Medical Services Board Members
FROM: Jennifer Weaver, 1st Assistant Attorney General and Judi Carey
Medical Services Board Coordinator
DATE: January 22, 2016
RE: Proposed Medical Services Board Bylaws

Proposed changes to the Medical Services Board (Board) bylaws were drafted and submitted to the Board in November. All bylaws adopted by state boards are required to comply with state statute. In our opinion, the current Board bylaws and the proposed changes to the bylaws are in alignment with state statute.

When the proposed changes to the bylaws were submitted to the Board and posted to the Department's web site, comments were received from stakeholders. Jen and I have reviewed the comments and those comments and our responses are below.

COMMENT: The [posted version](#) of the proposed rule changes appear to show the conflict of interest provisions are the only updated portion, given that section is highlighted in yellow and nothing else is noted. Comparing the proposed bylaws to the [current bylaws](#) exposes the multitude of other changes being slipped in though. Would it be too much to ask to have the department post a notated version, similar to the way rules are presented, explaining all of the proposed changes?

RESPONSE: The red line version of the proposed bylaws was posted to the MSB web site in November. The red line version and the clean version will be posted again in the February MSB web page.

COMMENT (in red): Article II, Section B, Paragraph 2

Emergency or special meetings of the Board may be called by the President, by the Executive Director of the Department, or upon written request of a majority of members of the Board. Notice of any emergency or special meeting of the Board shall either be mailed, delivered electronically, or by other means of communication to each member of the Board stating the time, place and purpose of the meeting. **Meeting notices will also be posted to the department website, and notice will be sent to stakeholder email lists maintained by the department.** Notice must be given no later than 24 hours prior to the time set for the meeting.



RESPONSE: This is the Department's current practice and is based on the Colorado Open Meetings Act at § 24-6-402, C.R.S. There would be no issues with adding the stakeholder's suggestion to the bylaws.

COMMENT (in red): Article II, Section C (This one is a big deal, the statutes need to be revised for consistency and the AG reps need to start giving the same message about quorum! As written this would allow as few as 4 members to make decisions!)

C.

QUORUM

The quorum of members necessary for the Board to transact business shall be a simple majority of the entire membership of the Board, as defined at § 25.5-1-301, C.R.S., regardless of whether all positions on the Board are filled. Decisions of the Board shall be by a vote of the majority of a quorum (proposed change) of the entire membership of the Board.

I suggest you use the definition of **Quorum** from C.R.S. 2-4-111.

RESPONSE: The proposed bylaws comply with state statutes at §§ 2-4-111 and 25.5-1-301, C.R.S. in defining a quorum of the board as a majority of the entire member, even if all of those positions are not filled. In other words, the entire membership per statute is 11, and therefore it always requires a minimum of six members to hold a rule-making hearing. The number of members required to adopt a rule is also defined in state statute at § 25.5-1-301 as "The vote of a majority of a quorum of the board shall constitute the action of the board." Thus, with a quorum of six, it would require a vote of four to adopt a rule.

If the version submitted by stakeholders was adopted by the Board, the bylaws would be out of compliance with statute.

COMMENT: Article II, Section D, **1st sentence needs to be changed to the current language**

The Board, by resolution of a majority of a quorum (proposed change) of the members of the Board, may designate and appoint one or more committees to serve in an advisory capacity to the Board.

RESPONSE: The stakeholder appears to want a majority of the membership versus a majority of the quorum. There is no applicable statutory provision, so either proposal is acceptable. However, it is our opinion that we should be consistent with other provisions of the by-laws and leave this as a majority of the quorum.

COMMENT: Article III, Section D: **this seems like a big change, I need time to try finding the referenced document from 1997 (perhaps the department can send that document out?) in the current bylaws to see if it differs from the lengthy statutory process defined at C.R.S. 24-4-103.**

RESPONSE: The document referenced in this section has not been located by the Department. The proposed revision would update the language by removing a reference to a document that seems to no longer exist and to ensure that all rule-making processes are in compliance with state statute.

COMMENT (in red): Article III, Section G

G. All meetings of the Board shall be recorded **electronically, and** appropriate minutes shall be taken **by the State Board Administrator or other designated staff, and both shall be maintained by the department and be made available to the public.**

RESPONSE: This is the Department's current practice that is based on the state statute. There would be no issues with adding the stakeholder's suggestion to the bylaws.

COMMENT: Article IV, Section D was removed and the first sentence is very important given HCPF's continued efforts to squash the client voice at MSB

D. Receipt of Medicaid or other health care services provided by the Department shall not be considered a conflict of interest.

RESPONSE: This sentence was not removed from the bylaws. It is in Article V, Section C of the proposed draft bylaws.

COMMENT: Article VI, Section B add 1 sentence at the end - Agendas will be posted to the department website at least five business days prior to each meeting.

RESPONSE: Current proposed language is: "B. The State Board Administrator shall prepare an agenda for all regular meetings, and have such agenda either mailed, delivered electronically, or faxed by other means of communication to Board members to assure receipt at least ~~five~~ five business days prior prior to each meeting." This is the Department's current practice based on state statute. There would be no issues with adding the stakeholder's suggestion to the bylaws.

COMMENT: Article VI, Section C add 1 sentence at the end - Minutes will be posted to the department website within five business days after their approval.

RESPONSE: Current proposed language is: "C. Copies of the minutes of each regular meeting shall either be mailed, ~~phoned~~ delivered electronically, or faxed by other means of communication to ~~all~~ all Board members by the State State Board Administrator to assure receipt at least five ~~business~~ business days prior to the the next succeeding regular meeting. Minutes of the emergency or special meetings shall either be mailed, delivered electronically, or by other means of communication to Board members as soon as ~~is~~ reasonably possible." This is the Department's current practice based on state statute. There would be no issues with adding the stakeholder's suggestion to the bylaws.

COMMENT: Article VI, Section D add 1 sentence at the end - "All documents requiring Board action will be posted to the department website at least five business days prior to each meeting."

RESPONSE: Current proposed language is: "D. Copies of rules, issue summaries and other documents that require Board action shall either be mailed, delivered electronically, or faxed by other means of communication to all Board members to assure receipt at least five business days prior prior to each meeting when possible." This is the Department's current practice based on state statute. There would be no issues with adding the stakeholder's suggestion to the bylaws.