

**State Board of Health
Minutes
September 12, 2013 – 9:00 a.m.
Perimeter Center, 9960 Mayland Drive
Richmond, Virginia 23233**

Members present: Bruce Edwards, Chair; Paul Clements; Eric Deaton; Dr. Steven Escobar; Dr. Anna Jeng; Dr. Charles Johnson; Dr. Mary McCluskey; Dr. John Seeds; Dr. Cathy Slusher; and Amy Vest

Members absent: Kay Curling; Dr. John deTriquet; and Gail Taylor

VDH staff present: Cynthia Romero, MD, State Health Commissioner; Joe Hilbert, Director of Governmental and Regulatory Affairs; Bob Hicks, Deputy Commissioner for Community Health Services; Marissa Levine, MD, Chief Deputy Commissioner for Public Health; Catherine West, Administrative Assistant; Susan Horn, Research Assistant; Maribeth Brewster, Risk Communications Manager; Erik Bodin, Director, Office of Licensure and Certification; Gary Brown, Director, Office of Emergency Medical Services; Lauri Kalanges, MD, Acting Director, Office of Family Health Services; Allen Knapp, Director, Office of Environmental Health Services; Karen Reed, Acting Director of Administration, Office of Minority Health and Health Equity; Dr. David Trump, Director, Office of Epidemiology; Wallica Gaines, Business Manager, Crater Health District; and Beverly Oden, Procurement Specialist, Office of Purchasing and General Services

Others Present: Allyson Tysinger and Robin Kurz, Attorney General's Office; Beth Bortz, President and CEO, Virginia Center for Health Innovation

Call to Order

Mr. Edwards called the meeting to order at 9:00 a.m. Mr. Clements led those in attendance in the pledge of allegiance.

Welcome and Introductions

Following introductions, Mr. Hilbert advised the Board that Bradley Beall has been appointed to fill Jim Edmondson's consumer seat on the Board. He further stated that Mr. Beall may not be able to make it to today's meeting and that VDH would provide orientation materials to new Board members as they are appointed. Mr. Hilbert then reviewed the agenda and the items contained in the Board's notebooks. The agenda was approved by unanimous consent

Approval of Minutes

The draft minutes of the June 6, 2013 Board meeting were approved by unanimous consent.

Commissioner's Report

Dr. Romero began the Commissioner's report to the Board with the introduction of the "agency stars" for the meeting: Beverly Oden with the Office of Purchasing and General Services and Wallica Gaines with the Crater Health District.

Dr. Levine provided the child development clinics portion of the Commissioner's report. The structure by which VDH delivers these services is being changed in response to budgetary reductions, in order to develop a sustainable model for service delivery. VDH is transitioning the service to a regional structure utilizing both contractors and local health districts. There was a brief discussion concerning the current budget for the child development clinics. There was further discussion concerning the fact that there will be some increased travel requirements in order for certain clients to receive services. VDH is working hard to ensure access to these services. In the Loud Fairfax Health District, in particular, VDH is working to ensure that transportation is available to those seeking services in that area. There was additional discussion of the importance of promoting the availability of transportation to child development clinics.

Dr. Levine provided the dental clinic program portion of the Commissioner's report. VDH is working to re-evaluate its model for providing oral health services. VDH's goal is to ensure access to oral health care. In response to a series of issues, including those pertaining to funding and workforce as well as direction from the 2012 General Assembly, VDH has developed a plan under which it would transition from dental treatment to preventive and population-based oral health services. Under the transition plan, which was developed in collaboration with a stakeholder advisory committee, VDH will continue to provide direct dental treatment services in areas of greatest need for an additional, but limited, period of time. VDH anticipates that it will continue to provide direct delivery of preventive services, utilizing a model that employs dental hygienists under the remote supervision of a dentist. Those preventive services would be focused on children in areas of greatest need. There was discussion concerning VDH's involvement of stakeholders in developing the oral health plan.

Mr. Hilbert continued the Commissioner's report by briefing the Board on the Excellence in State Public Health Law (ESPHL) program. Virginia is one of eight states chosen to participate in this program, which is sponsored by the Aspen Institute and the Robert Wood Johnson Foundation. The overall goal of the program is to state policymakers to more effectively address public health issues through collaborative approaches to evaluating potential changes in public health law and policy. As part of this program, Virginia's goal is to develop a model process for evaluating and developing public health law and policy on state level. The model process should be data driven, identify and engage all relevant stakeholders, be well-vetted, and be designed to benefit as broad segment of the population as possible. Two chronic disease risk reduction strategies will be examined as case studies using the model process. In addition, Virginia will also work to develop an online tool that would be used to help implement the model process. Dr. Romero stated that though the amount of grant funding under the ESPHL program is minimal, the Commonwealth will benefit by the relationships that are being built and strengthened through the project.

Mr. Hilbert then updated the Board on its request to the Board of Education (BOE) regarding the collection and reporting of body composition data as part of BOE's student testing protocol. The BOE's response stated that it considered the request made by the Board and unanimously voted to decline it. The response indicated that the data is still available on the Department of Education's website and available for use by VDH and others. Mr. Hilbert told the Board that, in the past, VDH has not made much use of this data, which was shared with the Board at its June 2013 meeting. However, Mr. Hilbert expects that VDH will begin to make greater use of this data. For example, in recent meetings he has begun to share this information with a variety of external stakeholders. There was a brief discussion focused on the importance of sharing this data widely, and making the public aware of the information.

Dr. Romero then provided an update on recent personnel changes:

- Joan Martin, retiring as Deputy Commissioner for Administration;
- Dr. Ted Tweel, new Acting Director for the Three Rivers Health District; and
- Dr. Cee Ann Davis, new Director for the Rappahannock/Rapidan Health District.

Abortion Facility Licensure Status Report

Mr. Bodin provided the Board with this update. One facility has closed voluntarily, bringing the number of licensed facilities to 18. VDH has not made any new visits or revisits since the June 2013 Board meeting. Since the last Board meeting, VDH has received four complaints; three were referred to the Board of Medicine and the fourth is still under review to determine if the complaint falls under VDH's purview. This brings the total number of complaints received since the inception of the program to 24, involving seven facilities. Dr. Seeds asked for the meaning of "complaint with no deficient practice". Mr. Bodin advised that this term means that what the complainant alleged is true but the complaint does not represent any violation of the regulations.

Informed Consent for Abortion Statute – Overview of VDH Statutory Responsibilities

Dr. Kalanges gave an overview of VDH's responsibilities pertaining to informed written consent for abortion. Under the statute, a physician performing an abortion is required to provide certain basic information to a woman at least 24 hours prior to the abortion. This basic information includes an offer to review various written materials prepared by VDH. VDH has developed four documents in response to this statutory requirement: Fetal Development; Understanding the Stages; Virginia Guide to Planning, Genetics and Social Services; Abortion-Making an Informed Decision; and Virginia Providers of Ultrasound Services at No Cost to the Client.

The list of no cost ultrasound providers was developed by VDH in 2012, following enactment of legislation requiring that such a list be prepared. Dr. Kalanges explained that VDH pursued good faith effort to contact known providers via a survey in order to collect information that would be used to compile the listing. Based on this survey, 18 providers agreed to be listed in the document. The list has been made available to the public by the VDH Office of Family Health Services and the VDH Office of Licensure and Certification. Subsequent to publication of the list, VDH received several constituent inquiries which raised numerous issues and questions pertaining to the information contained in the list. As a result, VDH has examined the process that was used to compile the list, and has identified certain opportunities for improvement. In

order to update the list, VDH is in the process of developing a web-based survey. Additional types of questions, designed to collect greater detail, will be included in the survey. Based on collection of additional data, VDH hopes to expand the number and type of providers included in the list to also include low cost ultrasound providers. VDH believes that such an expanded list would provide greater value to the public.

There was a brief discussion of complaints by the National Abortion Rights Action League that all of the providers on the current list are crisis pregnancy centers. It was explained that VDH does not endorse any facility included on this listing, and that VDH has no statutory or regulatory authority over crisis pregnancy centers. Dr. Romero clarified that every facility included on the list consented to having the name of their facility appear on the list.

Matrix of Pending Regulatory Actions

After a brief break, Mr. Hilbert reviewed the summary of all pending VDH regulatory actions. Since the June 2013 meeting, there have been six regulatory actions that the Commissioner has taken on behalf of the Board while the Board was not in session. These actions are:

- Emergency Medical Services Regulations (12VAC5-31) - Approval of the fast track action to amend the regulations to conform to 2013 statutory changes;
- Regulations for Licensure of Nursing Facilities (12 VAC5-371) – Approval of the final exempt action to implement the provisions of SB750 of 2013;
- Virginia Health Planning Board Regulations (12VAC20-10 through 12VAC20-50) – Approval of the fast track action to repeal the regulations;
- Granted petition for rulemaking to amend regulations concerning general building and physical plant requirements for hospitals, contained in Regulations for Licensure of Hospitals (12VAC5-410-650) on the grounds that the regulation conflicts with the provisions of § 32.1-127.001 of the Code of Virginia (decision to file a Notice of Intended Regulatory Action);
- Granted petition for rulemaking to amend regulations concerning architectural drawings and specifications requirements for nursing facilities, contained in the Regulations of Licensure of Nursing Facilities (12VAC5-371-410), on the grounds that the regulation conflicts with the provisions of § 32.1-127.001 of the Code of Virginia (decision to file a Notice of Intended Regulatory Action); and
- Denied petition for rulemaking to promulgate regulations for the licensure of plastic surgery centers (decision to take no action).

Mr. Hilbert advised the Board that the Commissioner was required to act on the three petitions for rulemaking on behalf of the Board in order to meet the 90 day requirement to issue a written decision.

Public Comment

Mr. Edwards discussed the rules and procedures by which the public comment period would be conducted. Pursuant to the Board's public participation policy, each individual has a maximum of two minutes in which to address the Board.

A total of ten individuals addressed the Board. Five of the individuals (Margaretha Baker, Kathy Greenier, Arlena Yarmonsky, Anna Scholl, and Cianti Stewart-Reid) expressed various concerns with the document “Virginia Providers of Ultrasound Services at No Cost to the Client,” prepared by VDH. These speakers also expressed various concerns with respect to crisis pregnancy centers. The other five individuals (Lynn Bisbee, Susan Null, Becky Boticelli, Chris Freund and Maggie Disney) expressed support for crisis pregnancy centers. Both groups of individuals welcomed VDH’s plans to expand the listing of ultrasound providers.

Board Action Items

Statewide Trauma Registry Minimum Data Set

Mr. Brown presented the changes to the statewide trauma registry minimum data set minimum standards. If approved, the criteria will become effective January 1, 2014. There was a discussion of how the data is reported (electronically). There was further discussion that the new data set includes some new data pieces but also has retired some data pieces. Dr. Escobar moved that the minimum data set be approved with Mr. Deaton seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Guidelines for Cleanup of Residential Property Used to Manufacture Methamphetamine

Mr. Knapp gave an overview of the guidelines. Legislation was passed in 2012 (HB796) and 2013 (HB1615) requiring the establishment of guidelines for the cleanup of residential property formerly used as clandestine methamphetamine laboratories. The purpose of the guidelines is to provide cleanup procedures and standards that when adhered to, will provide reasonable assurance that methamphetamine contamination in residential properties will be remediated to a level that poses a negligible threat to human health and the environment.

There was a discussion concerning the process by which the guidelines were developed, and the extent to which the estimated cost of cleanup was taken into account. There was also a discussion concerning the fact that the guidelines do not constitute a mandate for the cleanup of any residential property.

Dr. Seeds moved that the guidelines be approved with Dr. McCluskey seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Amendment to the Order of the Agenda

The Board, by unanimous consent, amended the agenda to move two agenda items (discussion of the 2014 Board meeting schedule and member reports) to this portion of the meeting.

2014 Proposed Board Meeting Schedule

Mr. Hilbert presented the proposed Board meeting schedule for 2014: March 20, June 5, September 11, and December 4. The schedule was approved by unanimous consent.

Member Reports

Eric Deaton – Hospital Industry. He commented concerning the implementation of the Affordable Care Act, the potential for expanding Medicaid, issues pertaining to reform of the Medicaid program, and issues concerning hospital reimbursement. A large portion of patients at his hospital are Medicaid recipients.

Dr. Steven Escobar – Virginia Veterinary Medical Association. He discussed federal and state laws and issues pertaining to compounding pharmacies.

Dr. Mary McCluskey – Managed Care Health Insurance Plans. She briefly discussed Amerigroup’s purchase by Wellpoint, as well as issues pertaining to expansion of Medicaid, provider reimbursement, and patient care

Dr. Charles Johnson – Virginia Dental Association. He reported on the upcoming meeting of the Virginia Dental Association, as well as two upcoming Mission of Mercy programs in Roanoke and Grundy. He also indicated that VCU is starting a dental clinic inside a new elementary school and that this may be a good model for the state. Dr. Johnson will provide more about this program at upcoming Board meetings.

Dr. Anna Jeng – Public Environmental Health Representative. She complimented the Virginia Public Health Association and the Virginia Environmental Health Association for their activities. These include training events for environmental health professionals; a career and internship fair to provide networking opportunities for students; implementation of a webinar series with topics including state rural health plans, disaster planning, the Affordable Care Act, and cultural competency and health literacy; and an educational seminar with information on general environmental, food, and onsite sewage- related topics.

Paul Clements – Nursing Home Industry Representative. He reported that efforts are underway to make sure all nursing home residents and staff receive flu vaccine. The Virginia Health Care Association (VHCA) has launched a new advocacy campaign to address budgetary challenges. VHCA is continuing to work throughout the state with hospital partners to improve transition of care from one level to another.

Amy Vest – Virginia Pharmacists Association. She reported on the prescription drug take back day scheduled for October and about pharmacists actively immunizing against flu. She also discussed issues pertaining to the prescription monitoring program.

Dr. Catherine Slusher – Medical Society of Virginia (MSV). She told the Board that MSV has been working with the Joint Commission on Health Care in order to provide input on studies pertaining to the physician work force, expedited partner therapy, school-based telemedicine opportunities, and prescription drug abuse. She also briefed the Board on ongoing efforts within the medical profession to implement the new ICD-10 coding system.

Dr. John Seeds – Medical Society of Virginia. Dr. Seeds told that Board that MSV is participating in ongoing discussions pertaining to Medicaid reform and expansion. MSV is also

looking at a pilot program for a multi-disciplinary program to reduce cost and improve patient safety.

Bruce Edwards – Emergency Medical Services (EMS) Representative. – He told the Board that the annual statewide EMS symposium will be held in November. Efforts are underway to implement new requirements, codified by the General Assembly during the 2013 Session, pertaining to the process for appealing adverse determinations by the operational medical director. He told the Board that new funds have been appropriated to replace equipment needed for electronic medical reporting. The EMS community is beginning to study issues pertaining to community paramedicine, which involves deploying a paramedic to provide preventive care to individuals who make frequent 911 calls. Mr. Edwards explained that, for example, there are measures that can be taken to prevent falls.

Lunch Presentation

Dr. Romero introduced Beth Bortz, President and CEO of the Virginia Center for Health Innovation (VCHI) as the lunch speaker. Ms. Bortz provided an overview of the VCHI's mission (to promote value driven health care) and its current projects. Cost is key factor to value-driven health care. She told the Board that the current health care system is unsustainable. VCHI's current projects include development of the Virginia Health Innovation Plan. Issues that are being examined for possible inclusion in the plan include workforce, payment and delivery, chronic disease, behavioral health, improving data and transparency, and early childhood development. VCHI's initial planning efforts have been supported in part by state funding. VCHI intends to apply for implementation funding from the Centers for Medicare and Medicaid Services. VCHI's efforts are being guided by an advisory group that includes representatives from a large number of stakeholders. VCHI has also established the Virginia Health Innovation Network, which is a web-based social network comprised of different "communities."

Regulatory Action Items

Sewage Handling and Disposal Regulations (12VAC5-610) – Emergency Regulations

Mr. Knapp presented the emergency regulations, pertaining to gravelless material and drip dispersal, for chamber and bundled polystyrene onsite sewage systems. Provisions for these systems are currently found in VDH guidance documents, which will no longer be needed upon approval of the emergency regulations. The regulations were drafted with input from stakeholder groups convened by VDH for this purpose.

There was discussion concerning the background and rationale for the legislation which mandated that these emergency regulations be promulgated. There was additional discussion concerning how the emergency regulations will be implemented at the local health department level, and whether there are any particular geographic regions of the state where gravelless systems can be used.

Dr. Jeng moved that the emergency regulations be approved with Dr. Johnson seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Regulations for Disease Reporting and Control (12VAC5-90) – Proposed Amendments

Dr. Trump presented the proposed amendments. These regulations specify what diseases are to be reported, by whom, to whom, and the timeliness of reporting. Disease reporting and control involves a coordinated process among the states with the federal government, and is constantly evolving. The proposed amendments represent minor changes in order to improve internal consistency and formatting of the regulations, and to bring the regulations into alignment with current practice.

There was a discussion concerning the immunization registry, and its ability to accept electronic reporting. There was additional discussion concerning what is meant by “immediate” reporting.

Dr. Escobar moved that the proposed amendments be approved with Dr. Johnson seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Regulations Prohibiting the Taking of Fish for Human Consumption from the North Fork of the Holston River (12VAC5-170) – Repeal

Dr. Trump presented the repeal of this regulation to the Board as the regulation is no longer pertinent. The regulation was adopted in 1974. The Code of Virginia currently requires VDH to publish fish consumption advisories. The North Fork of the Holston River is currently under a fish consumption advisory for mercury and PCB. Consequently, this regulation no longer needed. There was discussion concerning the fact that many other bodies of water in Virginia are also under fish consumption advisories. Dr. McCluskey moved that the repeal of the regulation be approved with Mr. Deaton seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Regulations for the Licensure of Nursing Facilities (12VAC5-371) – Proposed Amendments-Fast Track Action (electronic monitoring)

Mr. Bodin presented the fast track amendments to the Board. In 2007, VDH published guidelines about electronic monitors in residents’ rooms in a long term care facility. In 2013, the General Assembly passed HB2130 and SB974, which mandates that regulations be promulgated for electronic monitoring, using the existing guidance document as the basis of the regulations.

There was discussion concerning the fact that, should the Board approve this action, it would not come back to the Board for any further action—unless a sufficient number of objections were received during the public comment period. In that case, the fast track action would revert to a NOIRA and the regulatory action would proceed through the standard, three-stage regulatory process.

There was further discussion concerning the belief of VDH staff that this fast track action will not be controversial with the stakeholders, including members of the public and the long-term care industry.

Mr. Clements moved that fast track regulation be approved with Dr. Escobar seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Regulations for the Licensure of Hospitals in Virginia (12VAC5-410) – Notice of Intended Regulatory Action (NOIRA)

Mr. Bodin presented the NOIRA. This action is in response to the petition for rulemaking to bring the regulations into alignment with § 32.1-127.001 with regard to architectural drawings and specifications requirements for hospitals. VDH intends to bring the regulations into compliance with this section of the Code. Dr. Seeds moved that the NOIRA be approved with Dr. McCluskey seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Regulations for the Licensure of Nursing Facilities (12VAC5-371) – Notice of Intended Regulatory Action (NOIRA)

Mr. Bodin presented the NOIRA. This action is in response to the petition for rulemaking to bring the regulations into alignment with § 32.1-127.001 with regard to architectural drawings and specifications requirements for nursing homes. VDH intends to bring the regulations into compliance with this section of the Code. Dr. Slusher moved that the NOIRA be approved with Dr. Johnson seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Rules and Regulations for Identification of Medically Underserved Areas in Virginia (12VAC5-540) – Final Amendments

By unanimous consent, the Board suspended the rule to forego the scheduled break noted in the agenda and to continue with hearing the regulatory actions.

Ms. Reed presented the final amendments. There was a discussion concerning the definition of primary care, and the fact that hospitalists would be excluded under these amendments.

Dr. Jeng moved that the final amendments be approved with Dr. Seeds seconding the motion. The motion was approved unanimously by the Board by a voice vote.

Adjourn

The meeting adjourned at approximately 1:30 p.m.