

**State of Board of Health
September 5, 2019 – 9:00 a.m.
Perimeter Center – Boardroom 2**

Members Present: Faye Prichard, Chair; Gary Critzer, Tommy East; James Edmondson; Elizabeth Harrison; Linda Hines, RN; Anna Jeng, ScD; Patricia Kinser, PhD; Wendy Klein, MD; Jim Shuler, DVM; Stacey Swartz, PharmD; Katherine Waddell; and Mary Margaret Whipple.

Members Absent: Benita Miller; DDS, Holly Puritz, MD.

VDH Staff Present: Dr. Norm Oliver, State Health Commissioner; Bob Hicks, Deputy Commissioner for Community Health Services; Dr. Laurie Forlano, Deputy Commissioner for Population Health; Joe Hilbert, Deputy Commissioner for Governmental and Regulatory Affairs; Cathy Peppers, Administrative Assistant; Marian Hunter, Acting Assistant Director of Communications; Mylam Ly, Policy Analyst; Allen Knapp, Director of Environmental Health Services; Julie Henderson, Director of the Division of Food and General Environmental Services; Dr. Parham Jaber, Chief Deputy Commissioner for Public Health and Preparedness; Alex Jansson, Policy Analyst; Olivia McCormick, Director of Bedding Upholstery Inspection; Kim Beazley, Assistant Director of the Office of Licensure and Certification; Michael Capps, Policy Analyst; Rebekah Allen, Senior Policy Analyst; Diane Hawkins, Public Health Nurse; and Dr. Christine Fletcher, 340B Compliance Officer and Acting Consultant Pharmacist for the Office of Emergency Preparedness and Response.

Other Staff: Gena Berger Deputy Secretary of Health and Human Resources; Jessica Killeen, Deputy Counsel to the Governor; Rachel Becker, Special Assistant to the Secretary of Health and Human Resources; Grant Kronenberg, Assistant Attorney General; Robin Kurz, Senior Assistant Attorney General; Amanda Lavin, Assistant Attorney General; Allyson Tysinger, Senior Assistant Attorney General/Chief.

Call to Order and Pledge of Allegiance

Ms. Prichard called the meeting to order at 9:00am. Ms. Hines led those in attendance in the pledge of allegiance

Introductions

Ms. Prichard welcomed those in attendance to the meeting. Ms. Prichard then started the introductions of the Board members.

Proclamation in Memoriam of Dr. Hughes Melton

Ms. Prichard read the proclamation in memoriam of Dr. Hughes Melton and held a moment of silence.

Rules of Participation

Ms. Prichard went over the public participation policy.

Review of Agenda

Mr. Hilbert reviewed the agenda and the items contained in the Board's notebook.

Approval of June 6, 2019 Minutes

Dr. Kinser made the motion to approve the minutes from the June 6, 2019 meeting with Dr. Klein seconding the motion. The minutes were approved unanimously by voice vote.

Commissioner's Report

Dr. Oliver provided the Commissioner's Report to the Board. He began with the introduction of the "agency stars" for the meeting. Dr. Christine Fletcher, 340B Compliance Officer and Acting Consultant Pharmacist for the Office of Emergency Preparedness and Response and Diane Hawkins, Registered Dietician and Public Health Nutritionist at the Central Shenandoah Health District.

Dr. Oliver then updated the Board on key issues and projects that VDH is currently involved with, including:

- Population Health Update
- Maternal Mortality Update
- Public Health Impacts of Climate Change
- 2019 Hurricane Preparedness
- VDH Shelter Training
- Surry Nuclear Power Station Virginia Operations Exercise (VOPEX)
- Measles Cases
- Cyclosporiasis
- Legionnaires' Disease
- Comprehensive Harm Reduction
- Hepatitis C Treatment Pilot

Dr. Oliver ended his report by informing the Board about recent VDH personnel changes:

- New Staff: Mona Bector, Deputy Commissioner for Administration and Sable Nelson, Director, Division of Multicultural Health and Community Engagement, Office of Health Equity.

There was a short discussion on Ballad Health. Mr. Shuler asked Dr. Oliver to update the Board on their status. Dr. Oliver stated that Ballad Health presented plans on increasing behavioral health care, consolidated trauma care in order to increase the quality of care. Mr. Hilbert added that VDH has been charged with active supervision since 2018. VDH is in the process of reviewing the performance metrics and measures that were originally agreed to and working closely with Ballad and TN DPH to bring a consensus of recommendations to advisory panel for their review.

Dr. Kinser asked in the future if there could be a more extensive report on a maternal mortality update.

Regulatory Action Update

Mr. Hilbert reviewed the summary of all pending VDH regulatory actions. Since the June 2019 meeting the Commissioner has approved the following regulatory actions on behalf of the Board while the Board was not in session:

- Virginia Hearing Impairment Identification and Monitoring System (12VAC5-80) – Final Exempt Amendments
- Regulations for the Licensure of Home Care Organizations (12VAC5-381) – Notice of Intended Regulatory Action

Mr. Hilbert informed the Board that there were no actions taken by the Commissioner on behalf of the Board for Non-Regulatory actions since March 7, 2019 Board meeting.

Mr. Hilbert advised the Board that there are 17 periodic review in progress:

- Public Participation Guidelines (12VAC5-11)
- Virginia Emergency Medical Services Regulations (12VAC5-66)
- Regulations for Disease Reporting and Control (12VAC5-90)
- Rabies Regulations (12VAC5-105)
- Regulations Governing the Virginia Immunization Information System (12VAC5-115)
- Regulations Governing Eligibility Standards and Charges for Medical Services to Individuals (12VAC5-200)
- Rules and Regulations Governing Health Data Reporting (12VAC5-215)
- Methodology to Measure Efficiency and Productivity of Health Care Institutions (12VAC5-216)
- Regulations of the Patient Level Data System (12VAC5-217)
- Rules and Regulations Governing Outpatient Data Reporting (12VAC5-218)
- Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (12VAC5-220)
- Regulations for the Licensure of Nursing Facilities (12VAC5-371)
- Regulations for the Licensure of Hospice (12VAC5-391)
- Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees (12VAC5-408)
- Regulations Governing the Virginia Physician Loan Repayment Program (12VAC5-508)
- Guidelines for Virginia General Assembly Nursing Scholarships (12VAC5-510)
- Regulations for Identification of Medically Underserved Areas in Virginia (12VAC5-540)

There was a discussion concerning the periodic review process.

Public Comment Period 1 – Regulations for Licensure of Abortion Facilities and related topics

Following a short break the public comment period began. Ms. Prichard reviewed public participation policy.

Mr. Critzer motioned to extend public comment period 1 with Dr. Kinser seconding. The motion was approved by unanimous voice vote.

Thirty speakers signed up to speak about the Proposed Amendments to the Regulations for Licensure of Abortion Facilities. Twenty-nine people spoke.

Comments by the individuals who spoke in support of the proposed amendments included that regulations need to be science-based; parts of the regulations were unconstitutional, current regulations restricted access to care for women and regulations were medically unnecessary.

Comment by individuals who spoke in opposition to the proposed amendments included that the Board was charged with protecting the health of women and maintaining hospital standards.

Following the final speaker, Ms. Prichard asked those who did not speak but supported the proposed regulations to stand. She then asked those who did not speak but opposed the proposed regulations to stand. Ms. Prichard then asked the audience to hold up any signs they had.

Regulations for the Licensure of Abortion Facilities (12VAC5-412) - Proposed Amendments

After a break, Ms. Prichard went over Roberts Rules of Orders.

Ms. Allen presented the proposed amendments. She told the Board this regulatory action was initiated to (i) conduct a periodic review of 12VAC5-412, as required by Executive Order 14 (amended July 16, 2018); and (ii) assess and consider changes to 12VAC5-412.

As part of the periodic review, VDH received and reviewed 3,829 comments submitted during the 30-day public comment period following publication of the Notice of Intended Regulatory Action. Comments containing general statements of support or opposition were sorted from comments containing specific suggestions for changes to the regulatory text. Specific suggestions from commenters were then further sorted by VDH's subject matter experts.

Ms. Allen stated the proposed amendments do the following:

- Distinguish between medication abortions and surgical abortions
- Exempt facilities that provide only medication abortion from requirements that are not relevant to the provision of medication abortions, such as anesthesia-related requirements
- Reorganize the chapter so that requirements—particularly those related to policies and procedures—are grouped together rather than being spread across several sections
- Improve readability by breaking large amounts of text into subparts, and cleaning up the grammar and style to conform to the *Virginia Register of Regulations* "Form, Style and Procedure Manual for Publication of Virginia Regulations"
- Remove scope of practice overreaches and enhance consistency between statutory language and the regulations

Ms. Allen told the Board no new regulatory sections are being proposed.

Mr. Edmondson motioned to defer acting on proposed amendments until the next Board meeting in December with Dr. Klein seconding the motion. Ms. Whipple supported the motion, and added that it would be helpful to see the outcome of the *Falls Church v. Oliver* case. Ms.

Whipple asked the OAG for clarification concerning the extent of the Board’s discretion in promulgating amendments to the regulations. Ms. Whipple added she found the public comment helpful.

Ms. Tysinger clarified 2016 §32.1-127 set the minimum standards governing hospitals, which abortion facilities fall under. Ms. Tysinger told the Board once the *Falls Church v. Oliver* case was completed then the OAG can advise further.

There motion to defer acting on proposed amendments until the December meeting was approved unanimously by voice vote.

Public Comment Period 2 – Any other topics not previously identified in Public Comment Period 1

Following a short break, Ms. Prichard announced there were no speakers signed up for Public Comment Period 2.

State Medical Facilities Plan (12 VAC5-230) - Final Amendments

Mr. Bodin presented on the final amendments to State Medical Facilities Plan. The Final Amendments will update the State Medical Facilities Plan to correct the definition of “cardiac catheterization” and add definitions for “simple therapeutic”, “complex therapeutic”, and “diagnostic” cardiac catheterizations, as well as update the definition of a Diagnostic Equivalent Procedure to reflect the differentiation between the types of cardiac catheterization. New review criteria will also be added for projects relating to cardiac catheterization and the new differentiation. The action will also make the appropriate changes to the occupancy standard utilized for determining the need for new nursing home beds.

Mr. Critzer made the motion to approve the final amendments to the State Medical Facilities Plan with Mr. East seconding the motion.

There was a discussion on what type of facilities are covered under the State Medical Facilities Plan.

The motion was approved unanimously by voice vote.

Certificate of Quality Assurance of Managed Care Health Insurance Licensees (12VAC5-408) - Fast Track Amendments

Ms. Allen presented on Fast Track Amendments for Certificate of Quality Assurance of Manage Care Health Insurance Plan (MCHIP) Licensees. The Code of Virginia was amended in 2018 to require MCHIPs that credential physicians in their network to establish protocols and procedures for reimbursing new provider applicants for health care services provided to covered persons during the period in which the applicant’s completed credentialing application is pending,

provided that the new provider applicant is ultimately approved by the MCHIP. The existing MCHIP regulations are in conflict with this new statutory requirement.

Ms. Allen told the board in section 10, definitions were added for “health care provider” or “provider,” “managed care plan,” “new provider applicant,” and “participating provider.”

In section 170, subsection F, which requires a provider to complete the entire credentialing process before a provider could begin seeing covered persons or enter into a contractual relationship with the MCHIP, has been repealed since it now conflicts with the Code of Virginia. Subsections O through S have been created to allow physicians and non-physician providers who provide care to covered persons of an MCHIP during the pendency of their credentialing application to receive reimbursement from the MCHIP, provided that their application is approved.

MCHIPs employ or contract with providers other than physicians, such as physician assistants and nurse practitioners. Aside from complicating VDH’s biennial regulatory examination of MCHIPs, it would be administratively burdensome for MCHIPs to differentiate between physician and non-physicians for credentialing reimbursement because it requires MCHIPs to set up two separate credentialing protocols and procedures, including two different billing practices. As such, the proposed subsections regarding reimbursement were drafted to include other providers in addition to physicians for a single unified approach to reimbursement of credentialed providers.

Ms. Hines made the motion to approve the Fast Track Amendments with Dr. Klein seconding the motion.

Ms. Hines wanted to know how reimbursements worked if MCHIP is pending. Ms. Allen clarified that providers are reimbursed if their application is approved, if it is not approved then they are not reimbursed.

The final amendments were approved unanimously by voice vote.

Regulations for Bedding and Upholstered Furniture Inspection Program (12VAC5-125) - Proposed Amendments

Mr. Knapp presented the Regulations for Bedding and Upholstered Furniture Inspection Program outline health, safety, and licensure requirements for entities that manufacture or import mattresses, upholstered furniture, pillows, and comforters, including products designed for infants and small children. Licensure and inspection activities are performed in order to protect and promote public health through ensuring that all new bedding and upholstered furniture has a proper law label describing the type of concealed filling materials found in the item. The regulation also ensures that consumers are informed about any animal hair, feathers, and down used as filling material, and the presence of any concealed material that may be an allergen to the members of the consumer’s household. The regulations also protect Virginia consumers from diseases and insects spread through unsanitary secondhand bedding and upholstered furniture through permitting and inspection of secondhand industry dealers, or Sanitizers, Reupholsterers, and Renovators.

Mr. Critzer motioned to approve the proposed amendments with Ms. Waddell seconding the motion.

There was a discussion about internet sales and how this regulation is impacted by those taken into account. Ms. McCormick clarified that regulations depends on where the point of sale originates.

There was a question from the Board on stakeholder input for the proposed amendments. Ms. McCormick clarified that a combination of feedback from the industry, comments from the NOIRA, evolution of regulation in the industry, requests from other states and subject matter expertise from VDH veteran inspectors were used to create these proposed amendments. VDH also participates in the International Association of Bedding and Furniture Law Officials which provides valuable insight.

There was a discussion on whether VDH regulates lodging facilities. VDH regulates lodging facilities; those inspections look at mattresses box springs and linens.

Dr. Klein inquired on the historical exemption for antique dealers. Mr. Kronenberg stated there was not statutory authority to exempt antique dealers. Ms. Prichard wanted to know how VDH regulates antique dealers. Ms. McCormick told the board that staff visit the antique dealers and work with them to obtain proper permits.

The proposed amendments were approved unanimously by voice vote.

2020 Board Meeting Schedule

The 2020 Board Meeting Schedule was presented to the Board as follows:

Thursday, March 26

Thursday, June 4

Thursday, September 3

Thursday, December 3

Mr. Critzer motioned to approve the 2020 Board Meeting Schedule with Mr. East seconding the motion. The motion was approved unanimously by voice vote.

Member Reports

Dr. Stacy Swartz – *Virginia Pharmacists Association* – No Report.

Ms. Mary Margaret Whipple – *Hospital Industry* – No Report.

Mr. Tommy East – *Nursing Home Industry* – No Report.

Mr. James Edmondson – *Corporate Purchaser of Health Care* – No Report.

Ms. Linda Hines – *Managed Care Health Insurance Plan* – No Report.

Dr. James Shuler– *Virginia Veterinary Medical Association* – Mr. Shuler volunteered and assisted with providing dental care in Wise County.

Dr. Anna Jeng – *Public Environmental Health* – No Report.

Ms. Katherine Waddell – *Consumer* – No Report.

There was a discussion on the regulatory process and the board asked for clarification on timelines and processes.

Mr. Gary Critzer – *EMS* – Mr. Critzer reported to the board EMS is having its 40th annual symposium with many courses and speakers. The next EMS advisory Board will be held at the symposium. There was a mobile integrated medicine training in Charlottesville. The Advisory Board will have a 2 day retreat in Richmond to discuss composition and the future of the Board.

Ms. Elizabeth Harrison – *Consumer* – No Report.

Dr. Patricia Kinser – *Virginia Nurses Association* – No Report.

Dr. Wendy Klein – *Medical Society of Virginia* – No Report.

Other Business

Mr. Hilbert introduced a new staff person, Alex Jansson, MPP, Policy Analyst, to the Board of Health.

Mr. Edmondson discussed microplastics as an item of interest for a future meeting.

Adjourn

Meeting adjourned at 1:06pm.