

**State Board of Health
Minutes
October 23, 2009 – 9:00 a.m.
Virginia Hospital and Healthcare Association
4200 Innslake Drive
Glen Allen, Virginia 23060**

Members present: Fred Hannett, Chairman; Dr. Craig Reed, Vice Chairman; Dr. Julie Beales; Scott Burnette; Paul Clements; Dr. Charles Johnson; Dr. Anna Jeng; Willis Logan; Jim Edmondson; Bruce Edwards; and Ed Spearbeck.

Members Absent: David Summers; Barbara Favola; Dr. Bennie Marshall; and Dr. Bhushan Pandya.

VDH staff present: Dr. Karen Remley, State Health Commissioner; Jeff Lake, Deputy Commissioner for Community Health Services; Joan Martin, Deputy Commissioner for Administration; Dr. Mark Levine, Deputy Commissioner for EP&R; Joe Hilbert, Executive Advisor; Martha Pulley, Policy Advisor; Catherine West, Administrative Assistant; Chris Durrer, Director, Office of Licensure and Certification; Dr. Michael Royster, Director, Office of Minority Health and Public Health Policy; Bob Hicks, Director, Office of Environmental Health Services; Kim Barnes, Information Technology Coordinator; Dr. David Suttle, Director, Office of Family Health Services; Gary Brown, Director, Office of Emergency Medical Services; Scott Winston, Assistant Director, Office of Emergency Medical Services; and Dr. Kevin Whaley, Office of the Chief Medical Examiner.

Others Present: Robin Kurz and Matt Cobb, Attorney General's Office. Jennie Collins, State EMS Advisory Board Chairman; and Gary Critzer, EMS Process Action Team Chairman. Allen Knapp and Heidi Hertz, guests of the Commissioner. Marcia Tetterton and Becky Bowers-Lanier.

Call to Order

Mr. Hannett convened the meeting at 9:00 a.m.

The new Board members were introduced:

Bruce Edwards – EMS representative – Mr. Edwards told the Board that he has a lot of interest in many of the issues that the Board is considering.

Paul Clements – Mr. Clements stated that his role is to be the voice of long term care on the Board.

Willis Logan – Mr. Logan explained that he is particularly interested in drinking water, childhood obesity, and communications. He stated his belief that government can do a lot of good to improve quality of life.

Dr. Anna Jeng – Public environmental health representative.

Dr. Remley introduced Heidi Hertz, one of the VDH Agency Stars. Heidi manages and coordinates the CHAMPION obesity prevention program.

Approval of Minutes

The minutes of the July 17, 2009 Board meeting were approved unanimously.

Matrix of Pending Regulatory Actions

Joe Hilbert reviewed the listing of all of the pending VDH regulatory actions. There were no questions.

Commissioner's Report

Dr. Remley reviewed the FY10 Budget Reduction Plan. There was a discussion of requirements of matching grants, and an explanation that these requirements do vary. There was a discussion of VDH fund balances, including various time limits on how long particular balances can continue to be carried forward.

Mr. Hannett commended VDH for its transparency and inclusiveness in developing the recommendations for budget reductions.

Dr. Remley mentioned that VDH has have hired 400 wage employees for H1N1, at the same time FTEs in other VDH programs are being laid off.

As revenues improve, Dr. Remley wants to take a close look at how to rebuild the VDH budget and to determine where new funding should be targeted. Dr. Remley wants to incorporate a component into the agency's internal processes that evaluates the effectiveness of all VDH expenditures. Dr. Remley expressed hope that the Board can help VDH management think this through and communicate with policy makers.

Dr. Remley told the Board that Virginia's infant mortality rate in 2008 was lowest in State history. Virginia is now, for the first time, close to national average for infant mortality. Virginia is about in the middle of all the states in terms of the infant mortality rate.

There was a discussion of the impact on infant mortality of increased Medicaid reimbursement for deliveries. Dr. Remley agreed that had an impact, along with many other factors (e.g., family planning, WIC, educational opportunities, and home visiting).

There was a discussion of potential impact on infant mortality prevention of FY10 budget reductions for the Teen Pregnancy Prevention Initiative.

Dr. Remley provided the Board with an update concerning VDH's response to the H1N1 flu pandemic.

There was a discussion of the level of societal awareness of the importance of hand washing hygiene, including increased awareness in the clinical community. VDH has developed a program to help educate physicians about infection control and mitigation supplies. Dr. Remley told the Board that the U.S. Food and Drug Administration has extended the shelf life of tamiflu that had been stockpiled by VDH.

In light of vaccine production delays, VDH is modifying its vaccine allocation plan based on priority groups and population. There was a discussion on the need for voluntary public compliance with the priority group process. Dr. Remley indicated that in the next two weeks Virginia will have plenty of vaccine. There was a discussion of vaccine production issues, and the fact that there are a limited number of private sector manufacturers.

There was a discussion of the LAV nasal mist, which is for administration to healthy people between the ages of 2 and 50. VDH has a lot of this vaccine already, but many members of the public believe that they need “the shot” (i.e., injectable vaccine).

Dr. Remley explained to the Board that it takes from 10 to 14 days for an individual to develop immunity following vaccination. She also told the Board that there have been ten H1N1-associated fatalities to-date in Virginia (8 adults and 2 children).

There was a discussion of how quickly health care workers can return to work after they have the flu. The guidance from the CDC establishes that time period as 24 hours following cessation of fever and disease.

Mr. Burnette said that hospital industry is moving towards establishing secondary ERs for flu patients.

State EMS Advisory Board Update

Jennie Collins, Chairman of the EMS Advisory Board gave this update. The Advisory Board is working on an update to the State EMS plan. The EMS Advisory Board is planning to present this to the Board of Health in October 2010.

Proposed amendments to the EMS regulations are currently in the Governor’s office for review.

FY10 budget reductions for EMS are very concerning to the EMS Advisory Board, in terms of their impact on the ability to meet service demands. State supported training funds have been reduced. EMS agencies rely on state funding.

The 30th Annual EMS Symposium will be held in Norfolk from Nov 11 – 13. Enrollment this year is just under 1,800 individuals. This is a cost effective mechanism for providing EMS continuing education. Ms. Collins extended an open invitation to all Board members for the banquet on Saturday evening.

Commissioner’s EMS Process Action Team Update

Gary Critzer, Chairman of the EMS Process Action Team (PAT) gave this update.

Bruce Edwards was co-chair of the PAT.

The PAT conducted its work through seven meetings held over the course of nine months in 2008. A wide range of stakeholders participated, and the entire EMS system was represented. The work included in-depth look at the regional EMS council system, including service area designations. This was the most comprehensive review of the regional council system since it was first established in 1970's.

Meetings were held across the state. The last meeting was facilitated by UVA Cooper Center over a two-day period. The last meeting included a facilitated discussion of what was working, what wasn't and what could be done differently.

There are currently eight service areas but they are filled by 11 Regional Councils. (A former Council was divided into four components).

The PAT's recommendation is to reduce the service areas by one, and to combine the Blue Ridge and Western VA regional councils. The PAT also recommends allowing more than one regional council per service area.

Regional EMS Council designations will be brought to the Board for formal approval in April 2010.

Mr. Critzer told the Board that he believes that the PAT represented a successful process.

Health Information Technology Update

Mr. Hannett said health information technology (HIT) is critical element in future of public health and health care in general. It is not a panacea but is an essential foundational element.

Kim Barnes provided this update. She provided a brief history of state health IT issues, including the work done by Governor Warner's Health IT Task Force, and Governor Kaine's Health IT Advisory Council.

Kim told the Board that, as a result of legislation enacted during the 2009 General Assembly, a HIT Standards Advisory Committee now advises the Information Technology Investment Board.

Ms. Barnes told the Board that Governor Kaine has created an Office of Health IT to be housed within VDH. Within this Office, Kim is the Coordinator of Health IT. Virginia has submitted an application for federal economic stimulus funding (ARRA) to promote health information exchanges across the health care system.

There was a brief discussion of the likely impact of health IT on the state's "No Wrong Door" initiative. Kim told the Board that health IT will have a positive impact on providers' ability to transfer individuals from hospitals to nursing homes and vice versa.

Mr. Hannett stated that ARRA included the HITECH Act, which establishes grant programs and regional extension center programs. It also provides up to \$40 billion in incentive payments to Medicare/Medicaid that are “Meaningful User” of “Certified HIT”. Definitions are being developed by Federal Advisory Committees.

There was a discussion of whether Computerized Physician Order Entry will be included in the definition of “Meaningful Use of Certified HIT.” Board members also mentioned that, if there are no workable definitions, it is unlikely that much of the incentive money will not be taken. It was also discussed that ,at some point, the CMS incentives will end and then penalties for not having meaningful use of certified HIT will become effective.

There was a discussion of the growth in consumer-focused Personal Health portals such as Microsoft HealthVault and Google Health, focusing on how consumer input data could be captured by physicians’ offices.

Overview of Federal Health Care Reform Proposals

Presented by Mr. Hilbert, focused on the three leading proposals.

- Senate Finance Committee Bill
- Senate Health Education Labor and Pension Committee Bill
- House Tri-Committee (Energy and Commerce, Ways and Means, Education and Labor Committees)

Mr. Hilbert told the Board that, in general, bills moving toward floor votes in both House and Senate would require:

- Most Americans to purchase health insurance
- Provide federal subsidies to help those of lower incomes afford coverage, including expansion of Medicaid eligibility
- Would give small businesses help in defraying the cost of coverage for their employees

The bills would also:

- Bar insurance companies from denying coverage on the basis of pre-existing medical conditions
- Limit their ability to charge higher premiums on the basis of age or family size

Mr. Hilbert pointed out several key differences among the proposals:

- A Public Plan Option is in the House bill, but only in one of the two Senate bills.
- The House bill mandates that employers provide coverage, but only one of the two Senate bills has the same mandate.
- Revenue generation – Senate favors an excise tax on insurance plans with relatively high premiums – those costing more than \$8,000 annually for individuals and \$21,000 annually for families. (40 percent tax on the amount by which the premium exceeds these thresholds.)

- House favors a tax on individuals making more than \$500,000 a year and households making more than \$1 million a year

There was a brief discussion of potential likelihood of a state based health insurance exchange having to be administered by VDH. There was also a discussion concerning the impact of the proposed Medicaid eligibility expansion on Virginia.

Working Lunch

Mr. Hannett facilitated a wide ranging discussion of issues pertaining to federal health care reform issues. These included access to care, financing of health care services and provider reimbursement, quality of care; impact of employer mandates on small businesses; and the amount of health care spending that occurs during last six months of an individual's life.

Mr. Hannett commented on the distinctions between financing health care based on transactions vs. one based on outcome and measuring quality.

There was a discussion concerning the difficulty of coordinating care and establishing medical homes under the current system.

There was also a discussion of the need to properly align the public's expectations, It is expected to be 2013 or 2014 before the public sees any impact, even if a bill does pass this year.

Mr. Burnette told the Board that it should be proud of health care in Virginia, which spends \$6,700 per Medicare discharge, compared to \$16,000 in Florida, a state with worse patient health outcomes than Virginia.

Public Comment

Becky Lanier - Association for Hospice - She thanked the Board for allowing another public comment period. She also thanked the VDH Office of Licensure and Certification for revising the regulations. She said that while the revised regulations are not perfect they are much improved and her organization supports them.

Regulations for the Licensure of Hospices (12 VAC 5-391) (Final Amendments)

Chris Durrer, Director of the Office of Licensure and Certification presented the amendments for these regulations.

Dr. Reed asked a question about who recommends the "All recommended immunizations" in the section on pets. Mr. Durrer indicated that this would be recommended by veterinarians.

Dr. Jeng asked about requirements for the handling of medical waste. Mr. Durrer explained that the handling of medical waste is governed by existing regulatory language, and that medical waste would have to be handled separately than other waste.

There was discussion concerning the distinction between a hospice program and a hospice facility.

The proposed amendments were unanimously approved.

Regulations Governing the Virginia Nurse Educator Scholarship Program (12 VAC 5-545) (NOIRA)

Dr. Royster presented the NOIRA.

Dr. Royster indicated that part of intent is to increase nurse educators for community college programs.

There was a discussion of the number of scholarships to be provided, and the amount of time allowed to complete the program.

The NOIRA was unanimously approved.

Regulations for the Administration of the Virginia Hearing Impairment Identification and Monitoring System (12 VAC 5-80) (Proposed Amendments)

Dr. Suttle presented the proposed amendments. Dr. Suttle explained that the proposed amendments are the result of VDH's Periodic Review of the regulation. The periodic review identified a need to revise regulations based on technological changes and other developments.

There was a discussion concerning the appropriateness for treatment of hearing impaired children. Dr. Suttle explained that under the proposed regulations, parents maintain the right to refuse screening pursuant to existing statutory provisions.

The proposed amendments were approved unanimously.

Regulations for the Onsite Sewage Indemnification Fund (12 VAC 5-612) (Final Regulations)

The final regulations were presented by Bob Hicks. There was a discussion concerning the structure and operation of the Onsite Sewage Indemnification Fund program. Mr. Hicks told the Board that on average about 2 or 3 claims are filed per month, representing less than one percent of new systems that are installed annually. About 40 percent of claims are approved. Denied claims can be appealed. The fund currently contains about \$350,000.

There was discussion of what constitutes a "typical" indemnification fund claim. Mr. Hicks explained that a claim would typically involve a situation where either the VDH site/soil evaluation was improper, or the conclusions drawn were inaccurate.

The Final Amendments were approved unanimously.

Schedule of Civil Penalties (12 VAC 5-650) (Final Regulations)

The final regulations were presented by Bob Hicks.

The schedule of civil penalties pertains only to onsite sewage systems.

There was a discussion of how these penalties will likely come into play with situations such as violations of reporting requirements of the emergency alternative onsite systems. Mr. Hicks explained to the Board that violations such as dumping untreated sewage would likely be viewed as a potential criminal violation.

The final regulations were approved unanimously.

Member Reports

Scott Burnette – Hospital Industry. The Virginia Hospital and Healthcare Association is looking at issues that involve true health care reform, including expanded reporting of healthcare associated infections, sharing of peer reviewed data on best practices for safety and quality, improvements in establishing medical homes, palliative care, and access to care. He also told the Board that there is a \$1.7 billion shortfall in the State Medicaid budget

Dr. Craig Reed – Virginia Veterinary Medical Association. He told the Board about a situation in Minnesota, in which influenza transmitted from a human had infected a herd of pigs. The animals have been eradicated. He remains concerned about avian flu.

Jim Edmondson – Consumer Representative. The VDH Healthcare Associated Infections committee continues to meet. He told the Board that, as a lay member of that committee, he is impressed that there is much less resistance on the part of providers to reporting information. He said that there is an increasing tendency to recognize the importance of transparency.

Paul Clements – Nursing Home Industry Representative. No report

Bruce Edwards – Emergency Medical Services Representative. Mr. Edwards told the Board that the EMS Advisory Council has standing committees which meet quarterly. He serves as chair of the Medevac committee.

Mr. Edwards discussed his concerns with the limitations on the ability of state boards to conduct electronic and/or telephonic meetings, pursuant to the public meeting provisions of the Virginia Freedom of Information Act (FOIA). Given the State's budgetary challenges, the expense of conducting in-person meetings should be recognized. Mr. Edwards requested that the Board consider the possibility of writing to the Virginia FOIA Advisory Council, asking it to revisit the prohibition on telephonic meetings. He believes that this could save money and increase participation on the part of Board members. He said that this would help the EMS Advisory Board standing committees.

Matt Cobb, Assistant Attorney General, advised the Board that FOIA does not contain an absolute ban on electronic meetings. Under FOIA, in order to conduct an electronic meeting, there needs to be a quorum of the Board physically present in a single location, and then provide

public notice as to where other Board members would call in from, and that members of the public would be able to be in the place where the board members are calling in from.

After some discussion, the Board agreed that Joe Hilbert would draft a letter for Fred Hannett to send to the Governor, requesting that the FOIA Advisory Council review the current statute to for the purpose of developing recommendations to expand opportunities to conduct electronic meetings.

Willis Logan – Consumer Representative. He told the Board that he is impressed with the amount of information that exists from public health community and the Thomas Jefferson Health District concerning neonatal development. He is very impressed with what VDH has done in response to the H1N1 flu, particularly in terms of communications and public outreach.

Dr. Charles Johnson – Virginia Dental Association Representative. He told the Board about the recent Mission of Mercy (MOM) dental clinic project in Grundy. The Virginia Dental Association sponsors six MOM projects each year. Emporia will be the site of the next MOM project. Dr. Johnson also told the Board that the VCU School of Dentistry is establishing a clinic in Wise County. In addition, Thomas Nelson Community College is starting a new dental hygiene program.

Ed Spearbeck – Virginia Pharmacists Association Representative. He discussed the financial impact on pharmaceutical manufacturers of drugs going off-patent. This reduces revenue available for research and development. He explained to the Board that the industry conducts a great deal of research concerning potential drugs that never make it to market.

Dr. Anna Jeng – Public Environmental Health Representative. Discussed ARRA funding for clean drinking water and wastewater treatment. She also told the Board about the Virginia Environmental Health Association.

Fred Hannett – Corporate Purchaser of Health Care Representative. Discussed health information technology and Federal Health Care Reform legislation.

2010 Board Meeting Schedule

The following dates were proposed for the Board meetings in 2010:

January 29, April 23, July 16, October 15 – all meetings to be held at the Perimeter Center in Richmond.

The 2010 Board meeting schedule was approved unanimously.

The Board meeting adjourned at approximately 2:20 p.m.