

Minutes
State Board of Health Meeting
February 2, 2007
Virginia Department of Health
109 Governor Street, Richmond Virginia 23219

Board Members Present: Dr. Jack Lanier, Chairman, Kandy Elliott, Jim Edmondson, Dr. Craig Reed, Ed Spearbeck, Fred Hannett, Dr. Bhushan Pandya, Dr. Charles Johnson, Barbara Favola, David Summers, Dr. Bennie Marshall, Dr. Julie Beales, Scott Burnette

Staff Present: Dr. Robert Stroube, State Health Commissioner; Dr. Jim Burns, Deputy Commissioner for Public Health; Dr. Lisa Kaplowitz, Deputy Commissioner for Emergency Preparedness and Response Programs; Jeff Lake, Deputy Commissioner for Community Health Services; Helen Tarantino, Deputy Commissioner for Administration; Joe Hilbert, Executive Advisor to the Commissioner; Martha Pulley, Policy Advisor to the Commissioner; Gary Hagy, Director, Division of Food and General Environmental Services; Kelly Lobanov, Office of Communications; Julia Anderson, Office of Communications; Chris Durrer, Director, Office of Licensure and Certification; Erik Bodin, Director, Division of Certificate of Public Need; Robert Hicks, Director, Office of Environmental Health Services; Catherine West, Administrative Assistant; Robin Kurz, Attorney General's Office; Matt Cobb, Attorney General's Office; Nelson Daniel, Attorney General's Office.

Call to Order

Dr. Lanier convened the meeting at 9:00 a.m. Dr. Lanier congratulated Dr. Stroube on his recent selection as president of the Association of State and Territorial Health Officials.

Approval of Minutes

The minutes from the October 2006 Board meeting were approved unanimously, after agreeing to one change requested by VDH staff on page 4, pertaining to the Board's approval of proposed regulations for disease reporting and control.

Commissioner's Report

Dr. Stroube briefed the Board concerning recent VDH personnel changes, including the return of Dr. Ted Tweel as Director of the Chickahominy Health District, the selection of Dr. Donald Stern as the Director of the Richmond City Health District, the temporary assignment of Dr. Tom Franck as Director of the Rappahannock Area Health District, and the hiring of Dr. Lisa McCoy as the Western Tidewater Health District Director. Dr. Stroube informed the Board that the health director positions in Lenowisco, Rappahannock-Rapidan, and Rappahannock Area are under recruitment. Dr. Stroube introduced Mary Hagood, the new VDH Orientation Project Manager, and Dr. Brooke

Rosshiem, a preventive medicine resident from VCU who is doing a health policy rotation in the Commissioner's office.

Dr. Stroube briefed the Board concerning pandemic flu preparedness issues. Using funding approved by the Governor, VDH has placed a purchase order for anti-viral medications through two vendors. VDH is working to develop a plan for the distribution of the medications. VDH needs to submit a pandemic flu response plan to the federal government by March 1. The Governor has established a Cabinet task force, involving representatives from each Secretariat, to focus on pandemic flu preparedness. VDH will receive the task force report later this month, and will use it as a basis for its March 1 report to the federal government. The Centers for Disease Control has released community mitigation guidelines for states and localities. All VDH plans related to pandemic flu will be updated to incorporate these guidelines.

Budget Update

Michael McMahon, Deputy Director of Financial Management, provided the budget update to the Board. His presentation focused on items in the Governor's proposed budget amendments pertaining to VDH. Dr. Stroube brought to the Board's attention a budget amendment for St. Mary's Health Wagon, which participated in the Remote Area Medical Clinic in Wise in July 2006. There was a brief discussion concerning funding for the Rx Partnership, and any effect of the continuing budget resolution in Congress on the VDH budget. Dr. Stroube explained the VDH immunization program probably has felt the most impact from the continuing resolution, as it has affected the timing of receipt of federal funds. There was some discussion concerning a proposed budget amendment that would transfer 20 positions and \$1.5 million in non-general funds from VDH to the Department of Environmental Quality in support of HB2802. Mr. McMahon explained that VDH had significant concerns with this proposed budget amendment, and that staff of the House Appropriations Committee were aware of the concerns.

There was additional discussion concerning the extent to which external interest groups and stakeholder organizations are aware of proposed changes to the VDH budget, and the steps that VDH can take to make such groups aware of the proposed changes. Dr. Stroube told the Board that VDH does not post information on the VDH website concerning member budget amendment requests. VDH can take steps to help promote the Governor's proposed budget.

Legislative Update

Joe Hilbert, Executive Advisor to the Commissioner, provided the legislative update. VDH is monitoring approximately 140 bills during the 2007 Session.

After receiving the update, the Board, pursuant to its statutory authority provided by §32.1-15 of the *Code of Virginia* ["The Board may, at each regular session of the General Assembly, suggest any legislative action deemed necessary for the better protection of life and public health."] voted unanimously to send a letter to the General Assembly

expressing support for SB1161 and HJR694. SB1161 would strengthen the provisions of the Virginia Clean Indoor Air Act, by prohibiting smoking in a greater number of locations than is currently the case. HJR694 would request the Secretary of Natural Resources and the Secretary of Health and Human Resources to convene a panel of experts to study the impact of land application of biosolids on human health and the environment. The Board directed VDH staff to draft the letters, for Dr. Lanier's signature, to the appropriate legislators.

The Board also directed VDH staff to provide an overview of the Certificate of Public Need program, including recent JLARC recommendations pertaining to the regional health planning agencies, at the April 2007 Board meeting.

Executive Session

At approximately 10:30 a.m., the Board voted unanimously to go into Executive Session for the purpose of receiving legal advice from counsel.

At approximately 10:45 a.m., the Board voted unanimously to return to Open Session.

Upon coming out of Executive Session, the Board engaged in a discussion concerning the VDH biosolids program. Each Board member had previously received an e-mail message requesting that the Board enact a moratorium on the issuance of biosolids land application permits in Campbell County.

Bob Hicks, Director of the VDH Office of Environmental Health Services, explained that a VDH permit for land application in Campbell was previously issued by VDH. That permit is for a couple hundred acres. Last fall, VDH received an application for a modification to that permit that would add 3,000 acres to the existing permit. Mr. Hicks explained that the modification application requires submission of extensive documentation (i.e., site booklets) to VDH. Campbell County also received a copy of the site booklets. As part of the evaluation of the permit application, VDH goes to each site that would be included in the permit modification, and reviews the information contained in the submittal against what the VDH regulations require.

Mr. Hicks told the Board that a lot of confusion has arisen in Campbell County in connection with the permit application, particularly in terms of which specific land application sites would be included under the modified permit, and who are the owners of the specific sites.

The Assistant County Administrator in Campbell has written to VDH requesting that VDH delay any further work on the permit modification pending completion of the General Assembly Session. VDH has not yet responded to the letter. Mr. Hicks told the Board that VDH has not handled the application for permit modification in Campbell differently than any other permit modification. VDH has not yet conducted a public meeting in Campbell concerning the permit modification application.

Dr. Lanier commented that the VDH website contains a log of all biosolids complaints that have been received, and a description of actions taken by VDH in response to the complaint.

Dr. Marshall asked if there was a specific protocol for Board members to follow in responding to e-mails or other correspondence from the public, such as the recent e-mail received from the constituent in Campbell County. Barbara Favola asked a similar question. Dr. Lanier responded that all Board members should respond to such correspondence by stating that it is being referred to VDH for follow-up and a more specific, detailed response.

Dr. Lanier stated that counsel to the Board has made it clear that the Board does not have the legal authority to impose a moratorium on the issuance of biosolids permits.

Regulatory Overview

Doug Harris, Adjudication Officer and Regulatory Coordinator, provided the regulatory overview. There was a brief discussion of the Petition for Rulemaking process. Joe Hilbert presented the matrix of pending VDH regulatory actions.

Public Comment

Mr. C.W. Williams addressed the Board concerning the biosolids program, and made specific reference to pending legislation (HB2802) that would transfer responsibility for the biosolids program from VDH to the Department of Environmental Quality.

Following Mr. Williams' comments, Barbara Favola asked the Board if it would be appropriate and practical for VDH staff to work with the patron of HB2802 in order to amend the bill such that it had an earlier effective date. Ms. Favola inquired further if the Board could send a letter to the patron of HB2802 to that effect. Dr. Stroube recommended against the Board sending such a letter. Dr. Stroube did tell the Board that he would examine potential options for an earlier effective date. Scott Burnette said that any Board member, on an individual basis, could convey such a request to the General Assembly.

Final Regulations – Bedding and Upholstered Furniture Program

Gary Hagy, Director of the Division of Food and General Environmental Services, presented the final regulations to the Board. There was a brief discussion concerning the extent to which VDH receives complaints concerning bedbugs. The regulations were approved unanimously.

Re-Proposed Amendments to the State Medical Facilities Plan (SMFP)

Jim Edmondson, Chris Durrer (Director of the Office of Licensure and Certification), and Erik Bodin (Director of the Division of Certificate of Public Need), presented the re-proposed amendments to the Board.

Mr. Edmondson stated that there was not complete consensus among the stakeholders concerning the re-proposed amendments nor should there be. Mr. Edmondson noted that regulated entities should not be expected to like every regulatory requirement.

Mr. Durrer and Mr. Bodin described some of the more controversial components of the amendments. These include occupancy levels for psychiatric beds, travel time standards for neonatal special care services, volume standards for CT services, and requirements for obstetrical services.

There was a brief discussion concerning the extent to which VDH monitors compliance with the SMFP. Mr. Bodin explained that the SMFP is a set of criteria for review of specific projects for which a Certificate of Public Need (COPN) is being sought. The COPN regulations, by comparison, establish the process and rules by which VDH governs the COPN program. The COPN regulations need to be reviewed and revised. VDH does have the authority, pursuant to the COPN regulations, to evaluate an application for a new COPN based, in part, on the entity's compliance with conditions established as part of a previously awarded COPN. In addition, Mr. Bodin explained that VDH monitors and enforces various issues as part of its medical facility licensure program.

Scott Burnette told the Board that the Virginia Hospital and Healthcare Association is pleased with the process that VDH followed in order to develop the re-proposed set of amendments, and is complimentary of the VDH staff.

Jim Edmondson stated that he would like the Board to begin thinking about a legislative proposal for the 2008 General Assembly Session that would require COPN recipients to report data to VDH concerning service utilization.

The Board unanimously approved the re-proposed amendments to the SMFP.

Member Reports

Dr. Pandya – He briefly mentioned the fact that the Medical Society of Virginia is tracking certain legislation.

Dr. Johnson – He briefed the Board concerning legislation which would have expanded the scope of practice of dental assistants. That bill failed in subcommittee. He also updated the Board concerning the DMAS Smiles for Children program, and the upcoming Mission of Mercy dental clinic to be held on the Eastern Shore.

Dr. Reed – He updated the Board on recent developments in Asia and Africa concerning avian flu. Dr. Reed told the Board that there has been widespread underreporting by the Chinese government of avian flu – related bird deaths. However, accurate reports are being received from credible non-governmental sources. Dr. Reed said that this is a troubling situation given the increasing levels of trade of food and environmental products between the U.S. and China.

Scott Burnette – The Virginia Hospital and Healthcare Association is closely monitoring COPN legislation, as well as various proposals affecting the Medicaid program. The largest overriding issue is the need to maintain the integrity of Virginia’s health care safety net.

Jim Edmondson – He commented on the inclusion in the President’s State of the Union Address of remarks pertaining to the need to reduce the number of uninsured individuals.

David Summers – He reported that the Virginia Association of Health Plans (VAHP) is monitoring over 100 bills. The VAHP has no position on legislation to mandate HPV immunization as a condition for school entry. The VAHP is opposed to HB2562, pertaining to balance billing.

Fred Hannett – He advised the Board that, at the national level, an increasing percentage of the employer community is looking at the continued viability and desirability of maintaining the traditional employer-based approach to providing health insurance coverage.

Kandy Elliott – The Virginia Health Care Association (VHCA) is continuing to work to protect the COPN process as it pertains to long-term care services. She advised the Board that while transparency of health information is an appropriate goal, she is concerned about problems with the public being able to obtain accurate and timely information. Ms. Elliott stated that, as an example, information provided to the public by Virginia Health Information, Inc. is not as accurate and timely as it should be. She said there needs to be a mechanism in place for providers to make corrections to the data as errors are identified. Ms. Elliott told the Board that information provided on the CMS nursing home compare website is also dated and not timely. Finally, Ms. Elliott complimented the VDH Office of Licensure and Certification’s website, which she said is very useful for VHCA members.

Dr. Marshall – She told the board that nursing workforce issues are very important to the Virginia Nurses Association (VNA). She hopes that workforce data collection improves as a result of the work of the Governor’s Healthcare Reform Commission. Dr. Marshall also told the Board that the VNA is promoting a “no-lift” policy in nursing homes, in order to accommodate the needs of aging nurses.

Ed Spearbeck – He commented concerning ongoing efforts at the Congressional level to amend federal law to enable Medicare to negotiate directly with pharmaceutical manufacturers concerning drug prices.

Barbara Favola – She updated the Board concerning the activities of the long-term care workgroup of the Governor’s Healthcare Reform Commission, of which she is a member.

Dr. Lanier – He updated the Board concerning his recent involvement with a number of issues, including biosolids, the obstetrical care pilot project, trans fats, and restaurant inspections.

Other Business

Dr. Lanier advised the Board that the VDH Chronic Disease Conference will be held in Chesterfield on April 17 – 19. Three members (Dr. Lanier, Scott Burnette, and Kandy Elliott) will represent the Board on a panel presentation/discussion concerning the Board’s chronic disease initiative. That presentation will take place on the morning of April 19.

Ed Spearbeck requested that VDH provide the Board with an update on pandemic flu preparedness, including the community mitigation standards, at the April 2007 meeting. Dr. Stroube stated that this would be provided.

Dr. Reed requested that the Board be provided with information pertaining to public health research. Dr. Stroube responded that VDH does not fund public health research to any great extent. However, Dr. Stroube told the Board that VDH would examine available options for providing this type of information to the Board.

The Board unanimously approved the following members of the Nominating Committee, which is charged with bringing a recommended slate of officers (i.e., chairman, vice-chairman and two other members of the Executive Committee) to the Board at the April Meeting:

- Kandy Elliott (chair)
- Dr. Reed
- Dr. Marshall
- Ed Spearbeck

Dr. Lanier told the Board that he does not choose to be a candidate for chairman for the term beginning on July 1, 2007.

The meeting adjourned at approximately 2:30 p.m.