

**State Board of Health
December 15, 2023 - 9:00am
Perimeter Center, Boardroom 2**

Members Present: Gary Critzer, Chair; Douglas Daniels, DVM; Michael Desjaton; Melissa Green; Lee Jones, DMD; Stacey Swartz, PharmD; Ann B.R. Vaughters, MD; and Mary Margaret Whipple.

Members Absent: Holly Puritz, MD; Melissa Nelson, MD; Anna Jeng, ScD; Maribel Ramos Elizabeth Ruffin Harrison. Patricia Kinser, PhD, Vice Chair; Patricia O'Bannon;

VDH Staff Present: Rebekah Allen, Sr. Policy Analyst, Office of Licensure and Certification; Michael Capps, Senior Policy Analyst; Laurie Forlano, State Epidemiologist; Julie Henderson, Director, Office of Environmental Health Services; Robert Hicks, Deputy Commissioner of Population Health & Preparedness; Joe Hilbert, Deputy Commissioner for Governmental and Regulatory Affairs; Alexandra Jansson, Senior Policy Analyst; R. Christopher Lindsay, Chief Operating Officer; Maria Reppas, Director, Office of Communications; Brenden Rivenbark, VDH Agency Star; Sandra Serna, Director, Office of Health Equity; Karen Shelton, State Health Commissioner; and Amy Tharp, MD, VDH Agency Star.

Other Staff Present: Darrell W. Kuntz III, Assistant Attorney General; Robin Kurz, JD, Senior Assistant Attorney General; John Littel, Secretary of Health and Human Resources; and Charis Mitchell, Assistant Attorney General.

Call to Order

Mr. Critzer called the meeting to order at 9:10 am.

Introductions

Mr. Critzer welcomed those in attendance to the meeting. Mr. Critzer then started the introductions of the Board members and VDH staff present.

Review of Agenda

Ms. Jansson reviewed the agenda and the items contained in the Board's binder.

Approval of September 14, 2023, Minutes

The minutes from the September 14 meeting were reviewed. Mr. Desjaton made a motion to approve the minutes, seconded by Dr. Swartz. The motion passed unanimously by voice vote.

Remarks by Secretary Littel

John Littel, Secretary of Health and Human Resources, provided remarks to the Board. He shared appreciation for the Board members work and engagement. He also shared several highlights from the Youngkin Administration's past year and moving forward including funding to eliminate the priority 1 wait list for developmental disability waiver services and the expansion of Right Help, Right Now with a focus on children. To support these efforts, the Centers for Medicaid Services provided a waiver to expand school-based care and counseling, and there is anticipated legislation targeted at helping provide guidelines for social media and

children. Secretary Littel also briefly discussed plans for the expansion of crisis stabilization units, and for the increased availability of naloxone in the face of the ongoing fentanyl crisis.

In regard to VDH, Secretary Littel shared appreciation for the work agency leadership, particularly the Commissioner, has shown for rebuilding the infrastructure of the agency, including that for financial management and human resources. He indicated issues in the Office of Emergency Medical Services (OEMS) reflect the need for better financial and human resource infrastructure. The Secretary said that the Governor plans to include in his budget funding to help address a number of financial issues within OEMS. He also highlighted ongoing work related to maternal and child health and looking forward to turning more of a focus towards that in the coming year.

Commissioner's Report

Dr. Shelton provided the Commissioner's Report to the Board. She updated the Board on key issues and projects VDH is engaged in including:

- Agency Stars
- Communicable Disease Update
- Holiday Satellite Media Tour
- American Rescue Plan Act Projects
- VDH Workgroup on Structure and Funding of Local Health Departments Outcomes
- Workforce: Non-Physician Directors/Medical Officers
- EMS Update
- Monthly Operating Reviews
- Language Access
- Strategic Planning Update
- Retirement of Bob Hicks

There was discussion regarding RSV vaccine availability and educational efforts to increase awareness and uptake. There was also appreciation from Board members and staff for Mr. Hick's years of service. There was also discussion around updates regarding the Office of Emergency Medical Services and emergency systems for the Commonwealth at large.

Regulatory Action Update

Mr. Capps reviewed the summary of all pending VDH regulatory actions.

Since the September 2023 meeting, the Commissioner approved five regulatory actions on behalf of the Board while the Board was not in session. Approved Result of Periodic Review of Regulations – Board of Health Regulations Governing Vital Records (12VAC5-550). The decision resulting from the periodic review of Chapter 550 is to amend the Regulations to conform the language to the *Virginia Registrar of Regulations' Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*. Approved Final Exempt Action - Regulation for the Certificate of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licensees (12VAC5-408); this non-discretionary action conforms to required legislative changes. Approved Notice of Intended Regulatory Action (NOIRA) – Certified Nursing Facility Staffing Standards Regulation (12VAC5-375); this begins promulgation of new regulations per legislative action. Approved NOIRA – Managed Care Health Insurance Plan

Quality Assurance Regulation (12VAC5-409); this action is to implement the results of the recent Periodic Review. And approved NOIRA – Regulation for the Licensure of Nursing Facilities (12VAC5-372). This action initiates a Periodic Review of the Regulations for the Licensure of Nursing Facilities (12VAC5-371), the results of which will be promulgated into a new Chapter 372, repealing Chapter 371.

Since the September 2023 meeting the Commissioner has not taken any non-regulatory action on behalf of the Board while the Board was not in session.

Mr. Capps advised the Board that there are 22 periodic reviews in progress:

- 12 VAC 5-67 Advance Health Care Directive Registry
- 12 VAC 5-90 Regulations for Disease Reporting and Control
- 12 VAC 5-105 Rabies Regulations
- 12 VAC 5-115 Virginia Immunization Information System Regulations
- 12 VAC 5-125 Regulations for Bedding and Upholstered Furniture Inspection Program
- 12 VAC 5-215 Rules and Regulations Governing Health Data Reporting
- 12 VAC 5-216 Methodology to Measure Efficiency and Productivity of Health Care Institutions
- 12 VAC 5-217 Regulations of the Patient Level Data System
- 12 VAC 5-220 Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations
- 12 VAC 5-221 Virginia's Rules and Regulations Governing Cooperative Agreements
- 12 VAC 5-371 Regulations for the Licensure of Nursing Facilities
- 12 VAC 5-381 Home Care Organization Regulations
- 12 VAC 5-405 Rules Governing Private Review Agents
- 12 VAC 5-407 Regulations for the Submission of Health Maintenance Organization Quality of Care Performance Information
- 12 VAC 5-507 Guidelines for General Assembly Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term-Care Facility
- 12 VAC 5-520 Regulations Governing the State Dental Scholarship Program
- 12 VAC 5-545 Guidelines for the Nurse Educator Scholarship
- 12 VAC 5-590 Waterworks Regulations
- 12 VAC 5-613 Regulations for Alternative Onsite Sewage Systems
- 12 VAC 5-620 Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells
- 12 VAC 5-640 Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings
- 12 VAC 5-650 Schedule of Civil Penalties

There was discussion about if personal care services were included in the Home Care Organization regulations.

Public Comment Period

There was one person signed up for the public comment period. Brent Rawlings from the Virginia Hospital and Healthcare Association shared support for the Certificate of Public Need regulatory action on the Board's agenda.

Workforce Incentive Programs

Ms. Serna presented regarding workforce incentive programs in Virginia administered by the Office of Health Equity (OHE). She provided an overview of OHE and the divisions within it. She then shared information about each of the currently funded programs administered by the office including:

- Mary Marshall Nursing Scholarships
- Virginia Long-Term Care Facility Nursing Scholarships
- Virginia Nurse Educator Scholarship Program
- Virginia Nurse Practitioner/Nurse Midwife Scholarship Program
- Virginia Nurse Preceptor Program
- Virginia State Loan Repayment Program
- Virginia State Loan Repayment Program – Delta Dental Foundation Extension
- Behavioral Health Loan Repayment Program
- Earn to Learn Nursing Education Acceleration Program

There was discussion about the nurse preceptor program and getting feedback from recipients.

Final Amendments to the Regulations Governing the State Dental Scholarship Program 12VAC5-520

Ms. Serna presented the Final Amendments to the Regulations Governing the State Dental Scholarship Program. In June of 2016, VDH conducted a periodic review of 12VAC5-520, “Regulations Governing the Dental Scholarship and Loan Repayment Programs.” As a result of the review, VDH determined it was necessary to use the regulatory process to amend these regulations, as the regulatory chapter has not been comprehensively revised in over a decade.

This regulatory action is necessary to amend the regulations so that 12VAC5-520 aligns with the regulations governing the other scholarship and loan repayment programs administered by VDH. The amendments include corrections to the definitions of terms utilized within the regulatory chapter; changes to make the regulatory chapter easier to read; formatting changes to make the regulatory chapter conform to other similar programs; and correcting or inserting language regarding 1) how to apply to the program and 2) the penalty to be paid in the event a recipient defaults after graduation.

There was discussion regarding the length of regulatory timelines between decision and action, as well as clarity for “economically disadvantaged background.” Dr. Jones shared his appreciation for VDH’s attention to oral health and issues around oral health workforce.

Dr. Jones made a motion to approve the final amendments with Dr. Vaughters seconding. There was a motion to further amend the regulations to provide clarity and a demonstrable measurement of what “economically disadvantaged” means by Mr. Desjadon, seconded by Dr. Vaughters. There was further amendment motioned by Dr. Jones and seconded by Dr. Vaughters related to how the VCU School of Dentistry was referred to in two sections. The amendments were adopted by unanimous voice vote. The amended regulations passed by unanimous voice vote.

Fast Track Amendments to Regulations of Food 12VAC5-421

Ms. Henderson presented the Fast Track Amendments to Food Regulations. The purpose of these regulations is to prevent foodborne illness by ensuring that foods prepared and served at food establishments in Virginia are safe, unadulterated, and prepared under sanitary conditions. This is accomplished by ensuring regulations reflect current science and technology regarding minimum sanitary standards for food establishments to protect the dining public. These standards include approved sources for foods used in food establishments, specifications for safe handling, storage, preparation and serving of food, personal hygiene of employees, precautions to prevent the transmission of diseases communicable through food, and the general sanitation of the facility. When followed, these minimum standards will protect the public's health, safety, and welfare.

The proposed regulatory action would amend the existing Food Regulations to incorporate, in part, 2022 amendments to the Food and Drug Administration (FDA) Food Code. Proposed edits include the addition and revision of definitions, updates to cross references, and changes to standards related to temperatures, food donation, and risk categorization. The FDA Food Code serves as a model document to assist state and local agencies with regulatory authority over food safety by creating a regulatory scheme that reflects the most current science available to reduce the risk of food borne illnesses associated with food establishments. Additional amendments are intended to ensure clarity and uniform application.

Dr. Swartz made a motion to approve the fast-track amendments with Dr. Daniels seconding. The motion passed by unanimous voice vote.

Fast Track Amendments to the Regulations for the Certificate of Public Need 12VAC5-220

Ms. Allen presented the Fast Track Amendments to the Regulations for the Certificate of Public Need (COPN). The purpose of these amendments is to create a fee schedule for the COPN program and revise the fee cap on applications. Chapter 1271 of the 2020 Acts of Assembly made extensive revisions to Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, which governs the Certificate of Public Need program in VDH. The amendments removed the prior statutory cap on fees and included authority for the State Board of Health to establish a fee schedule for the applications that it receives.

The goals of the regulatory change are to ensure that VDH receives sufficient revenue to support its COPN program and the mandated activities that the COPN program carries out. The problem the regulatory change is intended to solve is to update a fee cap that has not been changed in over 20 years and to create a fee for the registration process that currently lacks one.

There was discussion regarding the development of the fee schedule, and staffing for the COPN program.

Ms. Whipple made a motion to approve the fast-track amendments with Dr. Vaughters seconding. The motion passed by unanimous voice vote.

2024 Travel Meeting Recommendations

Mr. Hilbert presented recommendations to the Board regarding a potential travel meeting in June

2024. Mr. Hilbert reviewed the proposals from two sites, a joint one in Norfolk and Virginia Beach and one from Mt. Rogers Health District. The recommendation was made to travel to Norfolk and Virginia Beach in June 2024 and plan for Mt. Rogers in June 2025. The Board expressed appreciation to staff for preparing these proposals and the recommendations.

A motion to adopt the recommendation was made by Mr. Desjadon and seconded by Dr. Swartz. The motion passed by unanimous voice vote.

Policy Committee Discussion

At the September meeting, the Policy Committee and staff were asked to do two things prior to the December meeting. The first was to prepare information about how other Boards do or do not include written comments in the minutes. The second was to develop a one-pager describing the process and a graphic to illustrate for the Board by the December meeting.

Ms. Jansson shared that in reaching out to other Boards, most do not receive written comment, only oral comment at the meetings. For Boards that do receive written comment, similar to how this Board has done, they are included at the end of the minutes document. The recommendation was made that the Board may put a page between the end of the Board minutes and the beginning of any written comments to say that the remainder of the document is written comment received and may not reflect the views of the Board or its members.

Dr. Vaughters made a motion to accept the recommendation with Dr. Jones seconding. The motion passed unanimously by voice vote.

Mr. Capps shared the policy committee process overview. This provides that if there were an idea a Board members wished to submit, they email it with a justification of why VDH should investigate to the Policy Committee Chair, Mr. Hilbert, Ms. Jansson, and Mr. Capps. Next, staff will coordinate within the agency to create a one-pager on the topic and it will be sent to the Policy Committee. The Policy Committee may request additional information, but when they have enough information, can vote on a recommended decision that will be presented to the Board and voted on. The following Board meeting, the Policy Committee will report out and if the Board approves, the idea will move through the internal problem statement process through Commissioner approval. Once approved, it will be brought back to the Board to vote on adoption of the recommended items.

A motion to accept and implement this process was made by Ms. Whipple with Ms. Green seconding. The motion passed by unanimous voice vote.

Other Business

Dr. Jones asked if the frequent comment the Board has received regarding electromagnetic radiation was something that should be sent to the Policy Committee. There was a discussion around previous communications and that VDH does not have authority over this area, it falls to the Federal level. It was suggested that the Chair could send a note on behalf of the Board to acknowledge the concerns. A motion to have the Chair respond was made by Ms. Green and seconded by Dr. Vaughters. The motion passed by unanimous voice vote.

Adjourn

The meeting adjourned at 12:56pm.