



State Health Services Council Work Session

Department of State Health Services (DSHS)

Robert E. Moreton Building, M-739

1100 W. 49th Street, Austin, Texas

January 21, 2010

Minutes

Members Present:

Ms. Glenda Kane, Chair – Corpus Christi

Ms. Beverly Barron – Odessa

Dr. Kirk Calhoun – Tyler

Ms. Graciela Cigarroa – San Antonio

Dr. Jacinto Juarez – Laredo

Mr. Nasruddin Rupani – Sugar Land

Dr. David Woolweaver – Harlingen

Not Present:

Dr. Lewis Foxhall – Houston

Dr. Jeffrey Ross, D.P.M. – Houston

Visitors:

Joe Lovelace, Courtney Hoffman, Bobby Hillert, Cheryl Coney, Vicky Spradling, Stephanie Moles, Ricky Garcia, Matt Wall, Tom Valentine, Ezaleter Syaberg, James Jackson, Alda Santana, Sharen Ludher, Dianna Sosa, Judith McGreary, Emily Erickson

Council Chair, Glenda Kane called the meeting to order at 1:35

Public Comment (Agenda Item #4 taken up in part, by Chair at beginning of meeting.)

Joe Lovelace – Associate Director of Mental Health, Texas Council on MHMR centers – on Veteran's Mental Health Funding

Matt Wall – Associate General Counsel – Texas Hospital Association

Free Standing Emergency Rules

Courtney Hoffman – Academic Language Therapy Association – Dyslexia rules

Agenda Item 1a: Responses to Council Requests for Information

Briefing on Mental Health Initiatives for Veterans and their Families – Mike Maples and Sam Shore discussed the initiatives for returning veterans and their families particularly as they relate to mental health and substance abuse. Sam Shore discussed the recommendations that have come from the Mental Health Transformation Grant and upcoming projects and events. The full

report is on line at: [Texas Department of State Health Services, Council Agendas, Minutes, and Rule Actions](#)

Discussion: Council members asked questions about the gaps in services, availability of sufficient providers, oversight of service delivery, and length of services. They also asked for statistical information such as how many returning veterans do not have jobs, how children are affected, and suicide rate among returning veterans.

**Ms. Kane asked to continue to be briefed on this topic. Ms. Kane also requested that council members be sent copies of reports as they are sent out.

Agenda Item 1b: Plans for Adolescent Health Briefing – Luanne Southern opened a discussion on plans for a future presentation on adolescent health. Ms. Southern asked the council members what topics they would like to be briefed on regarding adolescent health.

Discussion: Council members requested to be briefed on obesity, drug abuse and sexual education related to adolescents. Since these are broad topics, the suggestion was to hold one briefing session on health and obesity issues related to adolescents and a separate session on mental health and substance abuse for adolescents.

Agenda Item 2: Rules Planned for Action at a Future Council Meeting. These rules will not be voted on January 22, 2010, but will be scheduled for the April meeting.

- a. Amendments to rules and a new rule concerning the regulation of general hospitals – Kathy Perkins introduced the rules. As a result of legislation that was passed, many rules must now be updated or amended. Beth Albro-Pratt discussed the following hospital licensing rules.

Health and Safety Code, Chapter 251, amended by Senate Bill 1932, relates to licensing requirements of hospitals temporarily providing outpatient dialysis services to a person because of a disaster. This rule change is expected to provide better access to patients needing dialysis services during a disaster.

Health and Safety Code, Chapter 257, added by Senate Bill 476 relating to a hospital governing body adopting, implementing, and enforcing a written nurse staffing policy and plan; establishing a nurse staffing committee as a standing committee of the hospital; and reporting of staffing information to DSHS. This rule change is expected to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, as nurses and hospital management participate in a joint process regarding decisions about nurse staffing.

Health and Safety Code, Chapter 258, added by Senate Bill 476, prohibiting mandatory overtime for nurses, defining mandatory overtime, providing exceptions for mandatory overtime, prohibiting a hospital from retaliation against a nurse who refuses to work mandatory overtime, and allowing a nurse to refuse to work mandatory overtime. This rule change is expected to protect patients, support greater retention of registered nurses,

and promote adequate nurse staffing, as nurses and hospital management participate in a joint process regarding decisions about nurse staffing.

Health and Safety Code, Chapter 259, added by House Bill 643, relating to employment and qualifications of surgical technologists. This rule change should increase patient safety by requiring hospitals to employ only appropriately educated and certified individuals as surgical technologists.

Health and Safety Code, Chapter 323, amended by House Bill 2626, relating to providing a forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency. This rule change is expected to increase access for victims of sexual assault that elect not to report the assault to a law enforcement agency.

Health and Safety Code, Chapter 98, amended by Senate Bill 203, relating to the reporting of health care-associated infections and preventable adverse events in hospitals. This rule change allows the DSHS to make publicly available hospital patient safety information in Texas, including information related to health care associated infections and preventable adverse events in a format that is easy to read and available on an internet website.

Discussion: Council members had the following questions:

Chapter 323 – Is there an age limit on the ability to opt out of reporting an event? Can a minor request that the event not be reported? Is it mandatory for sexual assault events to be reported? Is evidence kept and catalogued, in the event victims change their minds and later want to report the assault?

**Kathy Perkins will verify the information on collection of evidence and report back to the Council.

Chapter 257 – Were any concerns expressed by small rural hospitals that were not addressed?

- b. Amendment to a rule concerning nurse staffing policy and plans, nurse staffing committees, and mandatory overtime for nurses in psychiatric hospitals and crisis stabilization units. Health and Safety Code, Chapter 577, requires psychiatric hospitals and crisis stabilization units to be licensed by DSHS. The rules establish the licensing procedures and standards of operation for psychiatric hospitals and crisis stabilization units to protect and promote the public health and safety of individuals receiving services in these facilities. Health and Safety Code, Chapter 257, Nurse Staffing, added by Senate Bill 476, relating to a hospital governing body adopting, implementing, and enforcing a written nurse staffing policy and plan; establishing a nurse staffing committee as a standing committee of the hospital; and reporting of staffing information to DSHS.

Health and Safety Code, Chapter 258, Mandatory Overtime for Nurses Prohibited, added by Senate Bill 476, relating to defining mandatory overtime, prohibiting mandatory overtime for nurses, providing exceptions for mandatory overtime, and allowing a nurse to refuse to work mandatory overtime.

The rule change is expected to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, as nurses and hospital management participate in a joint process regarding decisions about nurse staffing.

Discussion: Council members had the following questions: Chapter 258 – Concerning mandatory overtime for nurses – Is there a maximum number of hours that a nurse can work in a day?

- c. Amendments to rules concerning the qualifications of surgical technologists, and healthcare-associated infections and preventable adverse events reporting in ambulatory surgical centers.

Discussion: Chapter 259 – For residents in training, are there restrictions on consecutive hours that a person can work? Was the requirement regarding surgical technologists a federal mandate? The surgical technologists have wanted this law to be passed. There was no requirement from the state. Current employees can be grandfathered.

Chapter 98 – If we are going to require that infections be reported, why do we not post that information also? If a facility makes a major error, what is the reporting process for this and how is the public made aware of this error? Council members expressed a desire to make information available to protect the public interest. Jeff Taylor provided clarification on reporting of preventable adverse effects.

Agenda Item 3: Rules Scheduled for Action by the Council on January 22, 2010.

- a. New rules concerning the regulation of freestanding emergency medical care facilities. Kathy Perkins introduced Beth Albro-Pratt to discuss the rules. The new sections are necessary to promulgate the rules and to implement legislation by the 81st Legislature, Regular Session, 2009, specifically, the amendment to Health and Safety Code, Chapter 254, (House Bill 1357) relating to the licensing requirements of freestanding emergency medical care facilities.

Discussion: Could there be an occasion when a patient would not be accepted because the level of trauma is too high? Will ambulances bring trauma victims to these facilities? Patient transport patterns by EMS are determined by protocols and are assessed at the scene. Does the free standing emergency medical center have an obligation to treat a patient if they are delivered by ambulance to them? Are there regulations regarding signage if the facility is not open 24 hours a day? Are there prohibitions or incentives to keep facilities from allowing patients to stay longer than 23 hours? Are there guidelines for repetitive patients? What are the rules concerning reporting mortality in these facilities?

- b. Amendments to rules and a new rule concerning issuance of Certificates of Free Sale and Sanitation and/or Certificates of Origin and Sanitation – Kathy Perkins introduced the rule and Claire Perkins discussed the rule. The purpose of the amendments and new rule is to clarify program policies and procedures, update fee schedules, and add specific

appeal procedures for applicants if a certificate is denied. The rules will ensure that Texas manufacturers and distributors of foods, drugs, medical device products, cosmetics, dietary supplements, milk and dairy products, and molluscan shellfish products are able to export safe products. The rules will clarify the requirements for Texas manufacturers and distributors who are seeking certificates in connection with their export outside of the United States and in accordance with The Texas Food, Drug, and Cosmetic Act. The rules also comply with the four-year review of agency rules as required by the Government Code, Section 2001.039.

Discussion: Are there federal regulations on these type of sales? The federal government offers a certificate of export, but this is very time consuming. Is this federally mandated? Do many states take this responsibility? We have some information on California, but not on other states. Company must have a footprint in Texas. A Certificate of Origin is issued if they are manufactured in Texas. A Certificate of Free Sale is issued if they are manufactured elsewhere. These regulations pertain to any method of exportation. Is 24 months too long between inspections? Difference between 12 and 24 months can make a huge difference in the quality of the warehouse. This is a resource issue, not enough inspectors to carry out inspections every 12 months.

**Ms. Kane requested that the resource issue needs to be a topic of discussion for another work session, and how we can accomplish these inspections more timely to make the industry safe.

- c. New rules concerning the licensing and regulation of dyslexia therapists and dyslexia practitioners – Kathy Perkins introduced the rule and Cindy Bourland discussed the rule. The purpose of the new rules is to provide a mechanism for the public to be assured that persons who use the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner” have met minimum educational, experience, and examination requirements. The overall purpose of the new rules is to comply with House Bill 461, which amended Occupations Code, Chapter 403, by implementing and administering a title-protection licensing program for dyslexia therapists and dyslexia practitioners. The new rules cover all aspects of the new regulatory program, including requirements and procedures for license application and fees; the Dyslexia Licensing Advisory Committee; code of ethics; license renewal and continuing education; and complaints and enforcement. The primary difference in the requirements is the difference between the masters and bachelors level.

In June DSHS staff met with stakeholders to provide them with draft proposed rules. In mid October the first meeting of the advisory committee was held. Full implementation of the program is expected by September 1, 2010, as required by the bill. Cost will be covered by the revenue generated by the fees. Public benefit is that consumers will now have a choice of providers based on licensure and education.

Discussion: For the purposes of billing Medicaid, are there licensing restrictions? Council members are concerned that we are protecting the providers. No further discussion.

- d. Amendments to rules and new rules concerning fees and procedures for issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs – Kathy Perkins introduced the rule and Cindy Bourland discussed the rule. The purpose of the amendments and new rules is to establish administrative procedures to evaluate, upon request, the criminal history of potential applicants to determine if they are ineligible to hold a license. The amendments and new rules will allow potential license applicants to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility. These evaluations will occur before the potential applicants enter or complete a preparatory educational program or licensure examination leading to licensure, thereby, allowing applicants to avoid unnecessary hardship or costs.

The rules comply with House Bill 963, 81st Legislature, Regular Session, 2009, which amended Occupations Code, Chapter 53. The bill authorizes the collection of a fee for providing potential applicants with a criminal history evaluation letter. All state agencies that issue licenses or certificates to engage in a particular occupation must adopt rules necessary to administer the new provisions by September 1, 2010.

The rules allow DSHS to prescreen an individual's criminal history, upon request, prior to enrolling in a training program or taking a licensure examination. DSHS will require a fee of \$50 to screen these persons and it is estimated that 195 persons in the applicable licensing programs will seek this evaluation per year.

Since professional licensing programs routinely perform criminal history background checks on potential license holders, the rules governing requests for criminal history evaluation letters will contribute to program effectiveness by identifying and notifying in advance certain potential applicants who are ineligible for licensure due to criminal history. The programs will track the number of requests received and the outcome of those requests within the program workload reporting structure.

Discussion: On candidates who emigrated to the United States from other countries, does the investigation only cover their time in the United States or does it cover the time spent in their mother country. Is it possible to use the Homeland Security database to cover those who emigrate from other countries? At what point do we do the criminal background check? Is it currently done at the time of processing the application? What percentage of licensees are audited for criminal history background checks after licensure?

- e. Repeal of rules and new rules concerning the negotiation and mediation of certain contract claims against the Department of State Health Services – Elizabeth Jones introduced the rule and discussed the rule. The purpose of the repeals and new rules is to provide rules that are located in one chapter designated for DSHS contracting rules instead of three different chapters with duplicate information. The rules are necessary to eliminate confusion for DSHS programs and their contractors by having rules accessible in one chapter in DSHS' rule.. The expected outcomes of the proposed repeals and new rules are to eliminate duplication and maintain clear, concise 2260 rules for DSHS

programs and their contractors. The statute requires that 2260 claims be heard by the State Office of Administrative Hearings. Parties must try to mediate the complaint informally. We do not anticipate any controversy on these rules.

Discussion: No discussion.

- f. Amendments to rules concerning the collection and release of hospital discharge data – Bruce Burns introduced and discussed the rule. The purpose of the amendments is to implement the data submission requirements for hospitals to submit inpatient discharge data to DSHS. The amendments add “diagnosis present on admission” (POA) to the list of data elements. The data element will be collected and used by DSHS for public reporting on the quality of care in the hospitals. These rules establish an indicator on collection to assist in the reporting of the quality of care on acute care hospitals. Some hospitals are exempt from the requirements for submission of POA indicators. The exempted hospitals are Critical Access Hospitals; Inpatient Rehabilitation Hospitals; Inpatient Psychiatric Hospitals; Cancer Hospitals; Children’s or Pediatric Hospitals; and Long Term Care Hospitals. The rules allow an exempt hospital to submit the POA indicators to DSHS voluntarily.

The public and hospitals will benefit from the production of additional health care provider reports that report on patient safety and provide information about the quality of care being provided in hospitals. The standardized data and the reports and information developed from the data will assist the consumer in making informed decisions on healthcare issues.

Discussion: Why is it less important to know of the quality of care in a specialty hospital than in a regular hospital? Stakeholders requested that the rules be proposed as they were in 2007. There was later consensus with the group that we go with the exemption of these proposed facilities. They can voluntarily comply. DSHS proposed the rule without exemptions but could not get consensus from the stakeholder group. ** Ms. Kane stressed that Council members should be included in the stakeholder meetings in order to provide the public perspective. She expressed concerns about recommending that this rule move forward. She has concerns that certain hospitals be allowed to opt out of reporting. Since this rule is up to vote at the Council meeting scheduled for January 22, 2010, Lisa Hernandez clarified the action the council can take at that time.

- g. Amendments to rules, new rules, and repeal of a rule concerning the regulation of training and certification of promotores or community health workers (CHW) – Sam Cooper introduced and discussed the rule. The purpose of the amendments, new rules, and repeal is to increase clarity of the rules, provide better conformance to statute, and expand opportunities for promotores/CHWs to obtain the training and certification established by Health and Safety Code, Chapter 48. The rules improve the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs. The new language addresses regulations necessary to administer the CHW Program. Sam Cooper detailed how DSHS is looking at

streamlining the training for this program. Stakeholder meetings have been held. Focus has been to increase flexibility but also to retain the quality of the training.

Discussion: Council members asked what language the trainings will be conducted in and what the curriculum is based on? Eight core components are required. No further discussion.

- h. Repeal of rules concerning the Program for Amplification for Children of Texas (PACT) – Jann Melton-Kissel introduced and discussed the rule. DSHS is repealing the PACT rules concurrently with HHSC amending Medicaid rules for hearing aid services to include clients younger than 21 years of age, enabling hearing services to align with the Centers for Medicare and Medicaid Services’ recommendation for PACT. Due to the integration of the program into the Medicaid services structure, there is no need for the PACT rules to remain within DSHS’ authority. No significant issues are anticipated with the repeal of the rules and there will be no fiscal impact to DSHS. This program provides for hearing aids and hearing services under Medicaid for Texas children.

Discussion: No questions.

- i. Amendments to rules, repeal of a rule, and new rules concerning the Children with Special Health Care Needs (CSHCN) Program – Jann Melton-Kissel introduced and discussed the rule. The purpose of these rules is to strengthen and clarify the rule language. The purpose of the amendments, repeal, and new rules is to strengthen and clarify the rule language, correct the grammar to improve the flow, accuracy, and consistency of the rules, and comply with the four-year review of agency rules required by Government Code, Section 2001.039. The rules will update names and addresses, revise definitions, clarify requirements of the program, and add procedures for third party recovery. The expected outcomes of the proposed rules are to enhance the understanding of program policy for CSHCN Services Program applicants, clients, and providers; increase readability of the rules; and accurately reflect program information for better interpretation of the rules by the public.

Discussion: Council members asked if there is an income level to qualify for this program? Applicants must be below the 200% poverty level and need to re-qualify every six months fiscally and every twelve months medically. Is there any integration with DARS on this program?

- j. New rule concerning the Texas Organ, Tissue, and Eye Donor Council – Jann Melton-Kissel introduced and discussed the rule. Jann Melton Kissel explained the purpose of the council. The purpose of the new rule is to streamline the roles and responsibilities of the council by incorporating the provisions of both the authorizing statute and the council bylaws into one document. The better-defined roles and responsibilities of the council, DSHS, the Department of Public Safety, and the Texas Department of Transportation are expected to be more effectively interpreted and applied as a result of the new rule. Jann Melton-Kissel explained how the registry works. Council was participatory in setting up the rules.

Discussion: No questions or discussion.

- k. Repeal of a rule and an amendment to a rule concerning the testing of Sexually Transmitted Diseases including Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus – Dr. Valadez introduced the rule and Janna Zumbrun discussed the rule. Ms. Zumbrun explained the changes in the rule as proposed and the recommendations. The purpose of the repeal is to delete an unnecessary rule from DSHS rule base in order to maintain clear and concise rules for the public. Section 97.135 is not necessary because the statute of Texas Health and Safety Code, Section 81.090, Serological Testing During Pregnancy, as amended by House Bill 1795, 81st Legislature, 2009, can stand on its own with no negative programmatic effect from repealing this rule.

The purpose of the amendment is to improve readability and clarity of the rule for the public. The amendment to Section 97.138 will comply with the Texas Code of Criminal Procedure, Article 21.31, as amended by House Bill 1985, 81st Legislature, 2009. The amendment allows the victim of the offenses listed in the statute the right to demand that the accused be tested for HIV/STD within a specific 48-hour time period. Previously, the statute gave discretion to the judge of whether to honor such a request from the victim. The amendment also includes content regarding situations where the accused is not able to be located within the 48-hour time period. New language to the rule adds subsequent testing after a conviction or following an initial positive test result. The reason the rules are being repealed rather than amended, is there is no need for duplication of the law. The second change is to guidelines which would be replacing the old language with new language and would require a change in the law in the code of criminal procedures. Requires the court to order the testing on behalf of the victim. The change in the language indicates a change in the tracking of the law.

Discussion: No discussion or questions.

- l. Repeal of rules concerning poison control centers Dr. Valadez introduced the rule and John Villanacci discussed the rule. The Texas Poison Center Network (TCPN) program is located in the Environmental and Injury Epidemiology and Toxicology Unit in the Prevention and Preparedness Services Division. The program administers the six Texas poison center contracts and provides public health oversight for the program. House Bill 1093 transfers the contracting and oversight responsibilities for the Network to the Commission on State Emergency Communications (CSEC) effective May 1, 2010. The purpose of the repeals is to remove rules that will no longer be required due to the transfer of the administrative oversight for the TPCN from DSHS to CSEC. The repeals will remove DSHS from oversight responsibilities and provide the public with the proper agency responsible for the TPCN.

Discussion: Have there been any adverse reports on the H1N1 vaccine? Yes, they are commensurate with the adverse events reported with regular flu vaccine.

Agenda Item 4: General Public Comment – Judith McGreary – Farm and Ranch Freedom Alliance on Raw Milk.

Glenda Kane asked if she could address a question to Machel Pharr. Lisa Hernandez clarified that a question could only be asked if it concerned a posted agenda item for the Council meeting.

Adjourn: Glenda Kane asked for a motion to adjourn. Motion by Dr. Juarez, seconded by Dr. Woolweaver. Ms. Kane adjourned the meeting at 5:40 p.m.



Glenda Kane, Chair

April 29, 1010

Date Approved by Council