



State Health Services Council Meeting

Department of State Health Services (DSHS)

Criss Cole Rehabilitation Center Auditorium

4800 North Lamar, Austin, Texas

September 6, 2012

MINUTES

Council Members Present

Ms. Glenda Kane, Chair

Dr. Kirk Calhoun, Tyler

Rev. William Lovell

Dr. Jeffrey Ross, Houston

Mr. Nasruddin Rupani, Houston – arrived at 9:20 a.m.

Dr. David Woolweaver, Harlingen

Council Members Not Present

Ms. Beverly Barron, Midland

Dr. Louis Foxhall, Houston

Visitors

Joe Lovelace

Jim Coles

Sharie Scott

Cynthia Humphrey

Bobby Hillert

Andria Franco

Josette Saxton

Jeff Slepín

Belinda Carlton

Greg Tillery

Tatiana Ferreila

Morgan Sanders

Elizabeth Raggo

Marsha Jones

Debbie Kelly

Denise Rose

Gyl Switzer

Randy Cain

Haley Cornyn

Mignon McGarry

Council Chair, Glenda Kane called the meeting to order at 9:14 a.m.

1. Approval of June 13 and June 14, 2012 Minutes – Skipped in order to move to Agenda Item 2.
2. Report from the Executive Commissioner of the Health and Human Services Commission (HHSC) – Ms. Kane introduced the new Executive Commissioner, former State Senator, Dr. Kyle Janek. Dr. Janek thanked Dr. Lakey and the Council, and indicated he is looking forward to the future with HHSC.

Moved back to Agenda Item 1: Approval of June 13 and June 14, 2012 Minutes – Council Chair, Glenda Kane asked for a motion to approve the Council work session minutes of June 13 and the Council meeting minutes of June 14, 2012. Motion made by Dr. Woolweaver, seconded by Rev. Lovell. Motion passed.

3. Commissioner's Report – Commissioner David Lakey provided a report regarding:

- Update on finishing the fiscal year.
- Regional and Local Health Services (RLHS) and Prevention and Preparedness Services (P&P) Divisions both have vacant assistant commissioner positions so this is an excellent time to reevaluate resources. Preparedness activities have been moved to RLHS and P&P has been renamed the Division for Disease Control and Prevention Services (DCPS), to be more aligned with what the Centers for Disease Control and Prevention (CDC) does. Dr. Lucina Suarez is the interim assistant commissioner in DCPS and Dr. Paul McGaha is the interim assistant commissioner in RLHS.
- State Epidemiologist, Dr. Thomas “Tate” Erlinger, has left the agency; DSHS is going through the process to hire a new state epidemiologist.
- Legislative Updates:
 - Rider 71 – Requires DSHS to contract for a comprehensive analysis of the public behavioral health system in Texas. Public Consulting Group has been contracted to perform the study. The Phase I Report has been completed and a Behavioral Health Forum was held in Houston June 8.
 - Rider 59 – Requires an evaluation of the regulatory system in Texas. The study will look at how DSHS can prioritize regulatory services and functions. MFR Solutions contracted to do the study. The final report is due in December.
 - Rider 63 – Requires DSHS to develop proposal to privatize one state hospital in 2013. Privatization is contingent upon approval by the Governor and Legislative Budget Board.
- Moreton Building Move – As of July 30, 2012, all 550 staff have been move out of the Moreton Building. Construction is scheduled to begin in mid-September and to be completed in 2014.
- Healthy Texas Babies (HTB) Initiative – DSHS developed an economic argument to reduce prematurity by seven percent over two years. HTB expert panel has met twice, now meets bi-annually. An HTB website is being developed with a marketing campaign to educate young women and men of child bearing age. There will be a Grand Rounds on this subject offering continuing education credits.
- Austin State Hospital (ASH) update – A workgroup has been convened to respond to patient safety issues at ASH. Changes are being implemented as recommendations are made.
- Public Hearing on Texas Women's Health Program (TWHP) Rules – The TWHP will transition from a Medicaid funded program to a state funded program. Target date is November 1, 2012. There was a public hearing held on September 4, 2012, attended by many stakeholders. Comments will be considered.
- Hospital Capacity Lawsuit – In January 2012, the judge ruled in plaintiff's favor. The judge ordered DSHS to make beds available to forensic patients within 21 days. DSHS is appealing the decision, but has also developed a plan to reduce the waiting list. As of this date, the waiting list has decreased from 292 to 193. DSHS has implemented all steps of the plan in order to meet commitment guidelines.
- Recognitions:
 - Susan Tanksley received the 2012 John DuSalt Medal, an international award for young investigators in newborn screening

- *Texas Ready or Not* received a second place 2012 Vision Award from the Association of State and Territorial Health Officials (ASTHO).
 - Juan Elizondo from Crockett High School, Austin, is the 2012 1st place winner in the Tar Wars poster contest. The Tar Wars Star Award honors individuals and organizations who have significantly contributed to the Tar Wars effort to keep youth tobacco free. Star Awards are presented annually at the Tar Wars National Conference, where recipients are recognized during a special ceremony for their long-term efforts and/or unique accomplishments. Council members asked that the color poster be signed by the artist and framed for Dr. Foxhall.
 - Texas Cancer Registry received the gold standard for accuracy and timeliness from the North American Association of Central Cancer Registries. Melanie Williams and Lucina Suarez accepted the award.
 - Kathy Perkins, Assistant Commissioner, Regulatory Services Division, received an award from ASTHO for state excellence in public health for her work in the trauma system.
4. DSHS Legislative Appropriations Request (LAR) for Fiscal Years 2014-2015 - This agenda item was delayed until later on the agenda.
5. Consent Agenda - Recommend to the Health and Human Services Commission proposal of the following rule actions for public comment:
- a. ~~Amendments to rules concerning emergency department staffing and colored alert wrist bands for hospitals~~
 - b. New rules concerning the Public Health Funding and Policy Committee
 - c. Amendments to rules concerning breast and cervical cancer services
 - d. Amendments to rules concerning Children with Special Health Care Needs Services Program
 - e. Amendment to a rule concerning the Preparedness Coordinating Council
 - f. Amendments to rules concerning the control of rabies
 - g. Amendments to rules concerning the reporting of health care-associated infections and preventable adverse events

Motion to approve consent agenda made by Rev. Lovell, seconded by Dr. Ross. Motion passed.

The following rules were removed from the consent agenda for further discussion:

- a. Amendments to rules concerning emergency department staffing and colored alert wrist bands for hospitals.

Kathy Perkins provided an update from the discussion held in the work session. Staff provided draft language developed after the work session in response to Council members' and stakeholders' concerns regarding physician staffing in emergency rooms 24/7. Language pertaining to additional information on wrist bands will be developed at a later date.

Discussion – Council members had the following comments and questions:

- Dr. Calhoun – He expressed concerns about overturning the decision made by a previous Council to require 24 hour staffing, especially when there is no consensus among the medical community. He is also concerned about making a quick decision regarding the training needed for emergency room personnel. The public has an expectation and perception that when they go to an emergency

room there will be a doctor present to care for them. He feels this should go to the Executive Commissioner for determination. Lisa Hernandez clarified that the Council can vote to move the rule forward, to not move the rule forward, or to amend the rule as written.

- Dr. Ross – He expressed concerns that, in small setting hospitals, information should be disseminated to the public advising that a physician may not be available 24/7. Public may not have that information when going to a hospital with a life threatening situation. He had a question about how staff will be monitored or evaluated to determine whether they are “qualified.”
- Ms. Kane – There is no ability in the process to differentiate based upon the area of the state and type of facility. There is no statute in Texas to define this. Kathy Perkins clarified that the rule is a minimum standard. It has gone through much debate but stakeholders have been unable to reach consensus. Ms. Perkins explained that DSHS currently is in an untenable situation in not enforcing a rule that is on the books.

Public Comment:

- Jeff Slepín, EmCare – There is a challenge for staffing smaller hospitals in the same classification as general hospitals. They are expected to have the same level of training and have staff that recognize life threatening issues in time to address them. He expressed willingness to participate in stakeholder groups to identify solutions that help everyone.

Council members had the following comments and questions for Mr. Slepín:

- Dr. Calhoun – There has been a compromise position that the physician at least be “in house,” not actually in the emergency room. Are you comfortable with this? Mr. Slepín said he is comfortable with this definition.
- Dr. Calhoun – Regarding transfer agreements between hospitals, a hospital is required to accept a patient requiring a higher level of care to ensure quality of care. Transfer agreements must be in place for smaller hospitals that are focused on surgery and have very limited medical treatment ability.
- Rev. Lovell – Does this rule as proposed exceed the federal Medicare guidelines? Ms. Perkins said that under Medicare guidelines, a physician needs to be on call, but thirty minutes response is understood, not specified. The DSHS proposed rule narrowly exceeds this guideline. What is EmCare, the organization Mr. Slepín represents? Mr. Slepín explained that it is a group management company that recruits physicians, staff, and billing for emergency department management, and contracts with hospitals.
- Greg Tillery, EmCare – There does need to be different approaches for different size facilities. EmCare has a variety of care models for various size facilities and various areas.
- Bobby Hillert, Texas Physicians Hospital Advocacy Center – DSHS put this concept in place after it was rejected by the legislature, which considered a bill that would have required 24/7 coverage in areas over 100,000 population. Kirk Cole clarified that what was discussed by the legislature in 2007 was to have a board-certified physician in the emergency room. Mr. Hillert suggested that we look at the eight hospitals that have received waivers of the 24-hour requirement.
- Denise Rose, Texas Hospital Association – Supports the compromise to not require a physician to be tied to the emergency room, but to require them to be on the premises.

Glenda Kane proposed having a discussion before the next Council meeting relative to the emergency room staffing issue. Dr. Calhoun asked if they could separate out the wrist band issue and move that forward.

Dr. Calhoun made a motion to separate the wrist band portion of the rules and move that part of the rule forward. Dr. Woolweaver seconded. Motion passed.

Lisa Hernandez explained that the motion is needed to table the emergency room staffing portion of the rule for additional stakeholder input; this meeting can be in the form of another open meeting. Dr. Ross made the motion; Rev. Lovell seconded. Motion passed.

Lisa Hernandez suggested that Regulatory Services staff schedule a stakeholder meeting and see how many Council members can attend. If near or at a quorum, DSHS will post as an open meeting. If not, those attending will bring back suggestions. The meeting can be a teleconference if a quorum of members cannot gather in one place.

Glenda Kane stated that nothing precludes the stakeholders from coming to some sort of consensus before the Council meets again.

Dr. Calhoun questioned if Council had rejected the rule, would it still have gone on to the Executive Commissioner? Lisa Hernandez responded that it would still move forward to the Executive Commissioner with the note that the recommendation was not supported by the Council.

The Council took a break at 10:50 a.m. and resumed at 11:09 a.m. to return to Agenda Item 4.

4. DSHS Legislative Appropriations Request (LAR) for Fiscal Years 2014-2015 - Commissioner Lakey and Bill Wheeler, Chief Financial Officer, provided an update on the LAR for fiscal years 2014-2015. A copy of the presentation is available at <http://www.dshs.state.tx.us/Council/agenda.shtm>

Discussion – Council members had the following comments and questions:

- Ms. Kane – DSHS has an obligation to protect the public. Is there a way that, when a restaurant applies for a license, some of that money could come to DSHS? Or does it go to the county? DSHS is responsible if there is an outbreak of salmonella. We are coming into a session when money is very tight. Since DSHS provides the response team for outbreaks, DSHS should get some of the dollars that are collected when an organization applies for a license. Dr. Lakey stated that DSHS would find out what funds were available and amounts expended in response efforts and provide that information to Council members.
- Dr. Calhoun – Requested clarification of the full-time equivalent reductions on sanitarians.
- Ms. Kane – Can we have a discussion with regulatory staff to institute some rules that protect the public in instances of employee negligence?
- Dr. Ross – We are asking for only \$77 million of the \$180 million needed hospital facilities and infrastructure. When do we approach the legislature for the additional funds?
- Ms. Kane – What is the current price for a pack of cigarettes and how much of the tobacco tax comes back to DSHS? DSHS will provide this information to Council members.
- Dr. Calhoun – What is an example of a swap as mentioned on slide 22 of the presentation?
- Dr. Calhoun – Suggested that the percentage of cut be added to the general revenue reduction slides.
- Rev. Lovell – How will TWHP fit into the DSHS budget plan for the future? Dr. Lakey responded that this will be an ongoing conversation with HHSC and it is not reflected in current budget discussions.
- Ms. Kane – It is important to support Dr. Lakey in addressing these issues in a meaningful, supportive way and to participate in meetings going forward.

6. General Public Comment – Council Chair, Glenda Kane called for general public comments.
- Joe Lovelace, Texas Council of Community Centers – Thanked Council and agency for service. Community centers have touched over 300,000 people in the last year. Texas ranks 50th in nation in mental health services. He strongly supports DSHS efforts in the LAR to maintain the current level of funding and exceptional items. The 1115 transformation waiver has tremendous benefits to draw down federal dollars. Mr. Lovelace provided an executive order signed by President Obama last Friday in El Paso. Order directs enhanced partnerships between state and private entities to provide services.

Adjourn – Council Chair Glenda Kane asked for a motion to adjourn the meeting. Motion made by Dr. Ross, seconded by Rev. Lovell. Ms. Kane adjourned the meeting at 12:30 p.m.

The next scheduled Council work session is Wednesday, November 28, 2012, and the next scheduled Council meeting is Thursday, November 29, 2012.



Glenda Kane, Chair
State Health Services Council

November 29, 2012
Date