



## **State Health Services Council Work Session**

Department of State Health Services (DSHS)

Robert E. Moreton Building, M-739

1100 W. 49<sup>th</sup> Street, Austin, Texas

November 30, 2011

### **Minutes**

#### **Council Members Present**

Glenda Kane, Chair – Corpus Christi

Dr. David Woolweaver – Harlingen

Dr. Lewis Foxhall – Houston

Dr. Jeffrey Ross – Houston

Dr. Jacinto Juarez – Laredo

Dr. Kirk Calhoun – Tyler

Rev. William Lovell – Dallas

#### **Council Members Not Present**

Beverly Barron – Odessa

Nasruddin Rupani – Sugar Land

#### **Visitors**

Jordan Head – Senate Health and Human Services Committee

Marsha Jones – HillCo Partners

Denise Rose – Texas Hospital Association (THA)

Helen Davis – Texas Medical Association (TMA)

Sue Milam – National Association of Social Workers, Texas

Randy Cain

Haley Cornyn – HillCo Partners

Tony Wahl – Texas Spine and Joint Hospital

Bobby Hillert – Texas Physician Hospitals Advocacy Center

Duane Hill – Beaumont Bone and Joint Institute

Joey Longley – Civic Initiatives

Joe Lovelace – Texas Council of Community Centers

Andria Franco – Office of the Governor

Debbie Kelly – South Texas Spine and Surgical Hospital

Jennifer Smith – Texas Association of Local Health Officials (TALHO)

Greg Hoke – Reckitt Benckiser Pharmaceuticals

Lee Johnson – Texas Council of Community Centers

G. K. Sprinkle – Texas Ambulance Association

Marilyn Hartman – National Alliance of Mental Illness (NAMI) Austin

Charles Bailey – Texas Hospital Association

Glenda Kane, Chair, called the meeting to order at 2:14 p.m.

1. Update from the Executive Commissioner of the Health and Human Services Commission. Executive Commissioner Suehs discussed major items of interest including:
  - Rider 59 – Regulatory Services Evaluation
  - Rider 71 – Behavioral Health System Review
  - Medicaid Managed Care Expansion
  - Medicaid 1115 Waiver Program

Discussion:

- Dr. Foxhall – It is important to discuss how to integrate behavioral health with physical health care.
  - Glenda Kane – Over 75% of indigent care in Nueces County is for behavioral health issues. DSHS must focus on prevention, with priority on children’s mental health issues.
  - Dr. Calhoun – The University of Texas Health Science Center at Tyler (UTHSCT) Internal and Family Medicine programs are working with local MHMR affiliates to make them a part of the training program to help manage behavioral health. MHMR affiliates are training residents about patients who are on multiple medications. In exchange, UTHSCT is taking their patients who are on stable meds.
2. Tobacco Cessation Funding – Assistant Commissioner Mike Maples presented on the tobacco prevention and control program. Mr. Maples detailed the effects of tobacco on people each day in the United States and Texas, as well as prevention control efforts in Texas. The complete presentation can be found at: <http://www.dshs.state.tx.us/council/agenda.shtm>.

Discussion:

- Dr. Foxhall expressed concern about spending cutbacks and adverse impact to programs. The Center for Disease Control and Prevention (CDC) recommends \$3.00 per capita. Texas is underfunded to address the problem, particularly the youth rate for smoking. He inquired about other avenues for funding that DSHS is pursuing. Dr. Foxhall asked Mr. Maples to expand on how the prevention and preparedness funds will be utilized for tobacco prevention. Dr. Valadez will be presenting on the proposed use of these funds at the Council meeting on December 1, 2011. Mr. Maples deferred to Dr. Valadez to respond on this topic at that time.
  - Dr. Foxhall asked how many are enrolled in the Texas Youth Tobacco Awareness Program and how DSHS can collaborate more with law enforcement to increase participation in the program.
  - Dr. Lakey asked Dr. Valadez to respond to the use of Community Transformation Grant funds. There are community implementation strategies incorporated into the grant. The request for proposal is out now and responses are due in next week.
  - Dr. Juarez asked if the reduction in the use of tobacco leads users into the use of another drug. He also asked if there is an increase in use among certain ethnic groups more than others.
  - Dr. Foxhall commented on the policy that says any entity doing business with the state must have a smoke free policy in place. He asked if the policies can be strengthened.
  - Dr. Lakey commented that there will be a change in statistics based on the changes in CDC requirements on how data is collected.
3. Rules Planned for Action at a Future Council Meeting. Public comments taken with each rule discussion for the following rules.

- a. Amendments to rules concerning the licensing and regulation of general and special hospitals. Kathy Perkins introduced the rule and Ellen Cooper provided the rule overview. Dr. Lakey addressed the Council, visitors and stakeholders on the importance of open discussion on these rules to reach resolution. At present there is not consensus regarding the requirement for a physician on site at a hospital to provide emergency care.

Discussion:

- Glenda Kane asked if the Joint Commission has rules or standards on this issue. She also asked about the death rates in emergency rooms that have a 30 minute wait period as compared to emergency rooms with shorter wait periods.
- Dr. Lakey added that the some of the challenge is the type of hospital and the volume in that hospital. In Texas, there are not specific licenses for anything other than a hospital or ambulatory surgical center.
- Mrs. Kane asked how free standing emergency clinics are affected by these rules.

Glenda Kane asked for a break at 3:30 p.m. Meeting resumed at 3:48 p.m.

Public Comment:

Bobby Hillert, Texas Physician Hospitals Advocacy Center – concerning physician coverage requirement  
Tony Wahl – CEO, Texas Spine and Joint Hospital, Tyler – concerning physician coverage requirement  
Duane Hill – Beaumont Bone and Joint Institute, Beaumont – concerning physician coverage requirement  
Debbie Kelly – South Texas Spine and Surgical Hospital. – recommend allowing physician to be in other areas of the hospital and not just the emergency room  
Charles Bailey – THA – in support of the draft rule with broader waiver process

Discussion:

- Dr. Calhoun previously served on the THA Board and recused himself from voting on this issue.
- Dr. Lakey asked how the broader waiver process that Mr. Bailey detailed would assist in getting all hospitals in one area to support a waiver. What is the bed size of the hospitals that would be seeking waivers?
- Dr. Calhoun asked what would be the minimum standard of care for patients until help arrives if we went to the Medicare rule that a physician needs to be available within 30 minutes.
- Rev. Lovell asked if other stakeholders have a position on the THA proposal.
- Helen Kent Davis, TMA, indicated support for the draft rule with caveat that a physician needs to be in the facility, but not necessarily in the emergency room. She indicated opposition to the waiver issue.
- Dr. Foxhall indicated that he is a member of the Board of Trustees of TMA, but was not present and did not vote on this issue when it was discussed. He said that TMA has indicated this will be brought up as a business item in the near future.
- Glenda Kane indicated she is not in favor of a waiver. Telemedicine may be an option. Mrs. Kane asked representatives from smaller hospitals if they would be amenable to having an agreement with the larger hospitals for coverage.
- THA proposes a non-discretionary waiver when all criteria is met. If all criteria is not met, granting a waiver would be discretionary.
- Dr. Calhoun asked if the position of TMA and THA can be characterized to say that they are not supportive of these rules. TMA indicated that they are supportive of having the physician in the hospital, not necessarily in the emergency room.

- Mrs. Kane asked what is the average number of beds in private facilities and what percentage of facilities have less than 20 beds.
  - Dr. Foxhall asked if current rules require all hospitals have an emergency room. Is there data on adverse events that occur in facilities and how that data relates to the staffing level of the facilities? Dr. Foxhall feels there more information is needed.
  - Dr. Lakey explained that some of the language in the draft rules is in response to bills passed last session. DSHS needs to move forward on the legislatively mandated parts of the rules, but the remaining issues can be presented and discussed at future Council meetings.
  - Glenda Kane said that she wants to hear from staff what is the geographic breakdown and size of these hospitals and what patients they see. She said that the Council needs to see the breakdown of 6-bed versus 600-bed facilities. Every hospital and doctor in the state does not necessarily support the agenda of TMA and THA. Council is here to act in the best interest of the citizens.
  - Dr. Lakey asked what the anticipated cost is to have 24/7 coverage in smaller hospitals.
  - Dr. Ross asked if physician-owned hospitals could provide a schedule for rotating coverage to other smaller hospitals.
  - Dr. Juarez asked if it would be a possibility to have a physician assistant available 24/7 with access to a doctor.
  - Dr. Lakey indicated there would be no decision today on the physician coverage issue. We are mapping out the process. We will discuss further at the next Council work session and staff will continue discussions with stakeholders. Meanwhile Council members can send questions to Carolyn Bivens. The goal of DSHS and the Council is transparency.
- b. Amendments to rules concerning adoption of vaccine preventable diseases policy – Kathy Perkins introduced the rule and Ellen Cooper provided the rule overview.

Discussion: None

Public Comment: None

- c. Amendment to a rule concerning the emergency medical services education program and course approval. Kathy Perkins introduced the rule and Maxie Bishop provided the rule overview.

Discussion:

Dr. Juarez asked if teachers who are teaching this will be required to have further credentials and if accreditation will be national rather than state.

Public Comment:

G.K. Sprinkle – Texas Ambulance Association – expressed concern with naming a specific entity for accreditation.

- d. Repeal of a rule and new rules concerning the Texas HIV Medication Advisory Committee – Dr. Valadez introduced the rule and Dwayne Haught provided the rule overview.

Discussion: None

Public Comment: None

4. Rules Scheduled for Action by Council on December 1, to be included on the consent agenda. Public comments taken with each rule discussion for the following rules.
  - a. Amendments to rules concerning the reporting of healthcare-associated infections – Dr. Valadez introduced the rule and Jeff Taylor provided the rule overview.

Discussion:

Dr. Foxhall asked if are there exemptions for rural or charity hospitals. Are these reported as absolute numbers or rates, and is there data required as to the severity of the event? For other infections besides elective procedures, will there be other risk factors reported that may impact the rate? Would this include individuals who are immune-compromised for other reasons?

Public Comment: None

- b. Amendment to a rule concerning the reporting and control of occupational conditions – Dr. Valadez introduced the rule and John Villanaci provided the rule overview.

Discussion: None

Public Comment: None

- c. Repeal of rules and new rules concerning department-funded substance abuse prevention, intervention, and treatment services –Ross Robinson introduced the rule and provided the rule overview.

Discussion:

Dr. Foxhall asked about the impact of this rule on tobacco control. Are we required to adopt model rules standards for tobacco or only for illegal substances? Dr. Foxhall pointed out the disparity of this issue since DSHS chose to incorporate the tobacco program into substance abuse. He said it was incumbent upon DSHS to develop model rule standards for tobacco.

Public Comment: None

- d. New rule concerning cottage food production operations –Kathy Perkins introduced the rule and Cheryl Wilson provided the rule overview.

Discussion:

- Dr. Ross asked who is responsible for labeling cottage foods and where will it be indicated on the label that DSHS has not made any inspections.
- Dr. Lovell asked if we can quantify the number of people and characterize or categorize those who are anticipated to be involved in cottage food productions.
- Dr. Ross requested a list of “dangerous products” and asked how we are planning to communicate this information. He asked if DSHS considered putting some type of notification at these establishments that they are not inspected. Has there been any stakeholder or vendor comment about this type of notification? If there is a concern, or adverse outcome, who will they notify? How is it communicated to the public?
- Dr. Lakey said it is still under the broad authority of DSHS to intervene in a public health issue.

- Dr. Foxhall asked if there is any baseline for adverse events in this industry. Is it part of the law that these vendors are not required to get food handler training?
- Dr. Ross asked about potential allergy labeling. How many of these types of foods have potential allergens in the ingredients?
- Dr. Juarez asked if the labels will be marked not for resale. Is there no inspection of the home?

Public Comment: None

- e. Amendments to rules and repeal of a rule concerning the regulation of food service establishments - Kathy Perkins introduced the rules and Ruth Hendy provided the rule overview.

Discussion:

- Dr. Foxhall asked if there were documented episodes of food borne illnesses from establishments where complaints had been filed. Of these complaints, is DSHS documenting the human and health impact and the regulatory effectiveness? Can the Council get reports to look at the effectiveness of this process over time?
- Dr. Lakey said we are getting better at identifying and investigating these outbreaks, so there may very well be more and more reported.

Public Comment: None

- f. New rules concerning sexual abuse and child molestation training and examination for employees of certain campus programs for minors – Kathy Perkins introduced the rule and Michael Minoia provided the rule overview.

Discussion:

- Dr. Juarez asked if religious organizations are exempt.
- Dr. Calhoun asked if institutions of higher education are exempted.
- Rev. Lovell asked if this would include high schools.
- Dr. Ross asked if background checks or reporting is required.

Public Comment: None

- g. New rule concerning adverse licensing, listing, or registration decisions – Kathy Perkins introduced the rule and Alan Morris provided the rule overview.

Discussion:

- Glenda Kane asked if we are trying to standardize the sharing of the information through these rules. Ms. Kane said that she thinks they need to make it longer than ten years for certain offenses, although this time is set by the legislature.
- Dr. Lovell asked how the information is cross referenced and if the system will be easy to circumvent.

Public Comment: None

5. Glenda Kane asked for general public comment. There was no general public comment.

Glenda Kane adjourned the meeting at 6:00 p.m.

The Council will reconvene Thursday, December 1, 2011, at 9:00 a.m.



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Glenda Kane, Chair  
State Health Services Council

February 23, 2012  
Date