

WASHINGTON STATE BOARD OF HEALTH

Final Minutes of the State Board of Health
August 11, 2021
Electronic meeting via ZOOM Webinar

State Board of Health members present:

Tom Pendergrass, MD, MSPH Vice-Chair
Umair A. Shah, MD, MPH
Stephen Kutz, BSN, MPH
Fran Bessermin
Bob Lutz, MD, MPH
Elisabeth Crawford
Temple Lentz, MOL
Kristin Peterson, Secretary's Designee

State Board of Health members absent:

Keith Grellner, RS, Chair
Vazaskia Crockrell

State Board of Health staff present:

Michelle Davis, Executive Director
Melanie Hisaw, Executive Assistant
Kelie Kahler, Communication Manager
Stuart Glasoe, Health Policy Advisor
Lilia Lopez, Assistant Attorney General

Samantha Pskowski, Health Policy Advisor
Kaitlyn Donahoe, Health Policy Advisor
Cait Lang-Perez, Health Policy Analyst
Lindsay Herendeen, Health Policy Analyst

Guests and other participants:

Lacy Fehrenbach, Department of Health
LinhPhụng Huỳnh, Department of Health

Tom Pendergrass, Vice Chair, called the public meeting to order at 9:30 a.m. and read from a prepared statement (on file). He then detailed operating procedure and ground rules for conducting a virtual meeting, and asked board members to introduce themselves.

1. APPROVAL OF AGENDA

Motion: Approve August 11, 2021 agenda

Motion/Second: Member Bessermin/Member Kutz. Approved unanimously

2. ADOPTION OF JUNE 1, 2020 MEETING MINUTES

Motion: Approve the June 1, 2021 minutes.

Motion/Second: Member Kutz /Member Lentz. Approved unanimously

Motion: Approve the June 9, 2021 minutes.

Motion/Second: Member Kutz /Member Crawford. Approved unanimously

3. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director greeted the Board and directed Board members to materials in their packets. She described the materials including recent Code Reviser filings for the COVID-19 Emergency Rule, the Local Board of Health Composition, the School Rule Effective Date Extension, and the Shellfish Sanitation rule. Ms. Davis said the materials included meeting summary notes from the most recent Environmental Health Committee and Health Promotion Committee meetings. Ms. Davis updated the Board about the recent three staff recruitments to support the Social Equity Cannabis Task Force (SECTF). She reminded Board members that the Council received funding for these project positions as a result of the 2021 legislative session, and said she was pleased to welcome Anzhane Slaughter as the project manager, Crystal Ogle as the administrative assistant and Joy Hollingsworth as the policy analyst. Ms. Davis said the Board is currently recruiting three other positions, one to help with community outreach and the rulemaking associated with the LBOH composition bill (E2SHB 1152). The other two positions are funded through Foundational Public Health System (FPHS) funding and include a Management Analyst 4 to serve to enhance our Health Impact Review (HIR) capacity, and a Communications Consultant 2 to provide communications and administrative support to our small team.

Ms. Davis gave an update on the Spokane Regional Health District Complaint. She said at the June 1 Special Meeting, the Board determined the information provided in the preliminary hearing investigation warranted a hearing and directed staff to notify Ms. Clark. She said the Board also directed staff to hire an administrative law judge through the Office of Administrative Hearings (OAH) to serve as the presiding officer for the purpose of conducting the hearing but not for issuing an initial order. Ms. Davis said she was waiting for the OAH to schedule a prehearing conference at which time the date for a hearing will be considered.

Ms. Davis shared in 2021 the Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to incorporate a racial equity analysis into its audit and reports where necessary and appropriate (ESSB 5405). She said the HIR team reached out to JLARC to offer assistance and noted the team would share more about their work over the past year.

4. DEPARTMENT OF HEALTH NOVEL CORONAVIRUS (COVID-19) UPDATE AND OTHER UPDATES

Umar A. Shah, Secretary of Health shared the Secretary's update (see presentation on file), and said his agency cornerstone values were where Equity, Innovation and Engagement meet. He provided a COVID-19 update which indicated that Delta as the dominant variant, the Department's continued vaccine efforts, and highlighting that unvaccinated people are at most at risk. He said that as of August 8, almost 8.2 million doses of COVID-19 vaccine have been distributed. He said the Department of Health's (DOH) campaign to get messaging out is #VaccineWA, and noted the key message is, if you are vaccinated, you are considerably less likely to suffer illness. He said Care-a-Van has been another effort to go into communities and offer vaccinations, community to community and neighborhood to neighborhood. Secretary Shah said we are not only fighting the virus pandemic, but also misinformation.

Stephen Kutz, Board Member, thanked Secretary Shah for his thorough update. Member Kutz said he is interested in the younger population, saying the media is reporting they aren't getting sick. Secretary Shah said we are looking at the data and watching the metric of those age 16 years and above, but we are also watching ages 12 and above. He said we know kids are not as vulnerable, but kids can get sick and have severe illness. He commented on stories from Houston of children hospitals filling up in ICU. Lacy Fehrenbach, Deputy Secretary for COVID-19 Response, shared data on rates for COVID in kids. Ms. Fehrenbach said we've had 10 pediatric deaths from COVID-19, and said this data is on the DOH dashboard. Secretary Shah talked about potential risk.

Bob Lutz, Board Member, talked about the Delta variant being more transmissible. 2% of children being hospitalized. Overall, numbers are increasing with low vaccination rates. Secretary Shah said there are a lot of unknowns right now and we are doing our best to protect people.

Vice Chair Pendergrass, commented on the population and that vaccine is preventing serious disease and infection. Masks and handwashing help. He emphasized he's seeing more discussion and the public is seeing science conducted in public conversation and he discussed the global connection of children and adults in other countries. He talked about the challenges in the next few weeks with school and sports.

Secretary Shah concurred with Vice Chair Pendergrass on the global perspective from an equity standpoint. He expressed his gratitude to all for everyone's efforts in this pandemic.

Lacy Fehrenbach, Deputy Secretary for COVID-19 Response, shared the COVID-19 update.

The Board took a break at 10:46 a.m. and reconvened at 10:52 a.m.

5. PUBLIC COMMENT (The Vice Chair allowed 3 minutes per person)

Jodi Hernandez shared their comments about transparency and information access regarding testing and they would like to see more.

Lorana Hoopes shared their comments about vaccines and masking and said masks should be optional.

Clayton Meyers shared their comments on COVID-19 virus, vaccines, and mandates and asked the Board to do what is right for the community.

Jacqueline Myers shared their comments about in-person meetings, the COVID-19 virus, vaccines and mandates.

Susie Olson Corgan shared their comments about the COVID-19 virus, hospitalizations, and her concerns with other chronic illnesses and the negative effects of the pandemic.

Bernadette Pajer shared their comments about the COVID-19 virus, vaccines, and masking, and shared their concerns with pharmaceutical companies and the mental health of people impacted by the pandemic.

Dawn Johnson shared their comments about the effects of the COVID-19 pandemic, masking, vaccines, and shared their concerns about misinformation about the pandemic and the public health response.

Stefanie Brushwood Gripp shared their comments about masking and kids returning to school and shared their concerns about kids wearing masks and a parent's right to make medical decisions for their children.

6. BRIEFING—COMMUNICABLE AND OTHER CERTAIN DISEASES, CHAPTER 246-100 WAC

Member Lutz introduced the modernizing of communicable and other certain diseases (presentation on file).

Kaitlyn Donahoe, Board Staff, introduced her colleagues on this project and provided an overview including background, draft revisions, interested parties engagement for feedback and comments and next steps. She said in 2020, the legislature passed ESHB 1551, modernizing the control of certain communicable diseases, and indicated the legislation went into effect June 11, 2020. She shared the rulemaking scope, and draft revisions.

Samantha Pskowski, Board Staff, shared detailed feedback received from interested parties. She said staff distributed an informal draft in June 2021, and planned to send out another draft in the coming weeks with edits based on the feedback.

Ms. Donahoe described the next steps and anticipated rulemaking timeline. She said staff expects to file the proposed rule (CR 102) in early October, and pending Board adoption, should be effective mid-January 2022.

Vice Chair Pendergrass asked for any feedback from the Board. Member Lutz said it has been a very thoughtful process with good stakeholder engagement and gave kudos to staff. Vice Chair Pendergrass concurred. Fran Bessermin, Board Member, commented on the great job of Member Lutz, and staff.

The Board recessed for lunch at 11:39 a.m. and reconvened at 12:40 p.m.

7. RULEMAKING PETITION—CHAPTER 246-272A WAC, ON-SITE SEWAGE SYSTEMS

Vice Chair Pendergrass read the cover memo to introduce the topic. Stuart Glasoe, Board Staff emphasized work by Board and Department of Health staff with the petitioner to better understand his ideas and concerns and said, to the extent possible, the petition and accompanying material should speak for itself. He said Jeremy Simmons of the Department of Health was available to help answer questions. Mr. Simmons introduced himself and said that, from his program position, he concurred with the recommendation to deny the petition for reasons outlined in the cover memo. He

said the proposed regulatory structure for do-it-yourself work would force regulators to review designs and inspect systems at an exponential increase in cost.

Elisabeth L. Crawford, Board Member asked Jeremy if the current on-site sewage system rulemaking addresses the petitioner's issues. Mr. Simmons said yes, the rule revision advisory committee considered such issues but did not suggest moving in that policy direction. Member Kutz said there are not many ways to accomplish what the petitioner wants and have safe septic systems at least in critical areas of the state around water and areas with poor soils. He said he would vote against the petition. Member Bessermin said the petition has been thoroughly investigated by staff and made a motion to deny the petition for rulemaking.

Member Peterson thanked the petitioner for participating in this process and staff for their review. She said it does appear we have taken the recommendations seriously and agreed with the reasons stated for denying the petition. Member Crawford said she too wanted to thank the petitioner for his participation and time bringing this forward. She said that with her previous environmental health experience, the petition made her nervous, especially with do-it-yourself design and installation of systems. She said a lot could go wrong, and noted the risk to the public, and agreed with the denial.

Member Kutz said what he liked about the request is homeowner participation in operation and maintenance of systems which is critical to ensure no failures. Mr. Simmons said we always try to educate system owners—a critical step ensuring systems work well. He said the rule generally accommodates owner participation, but not as much with design and installation. Vice Chair Pendergrass asked about performance-based handling of black water while ignoring gray water, and risk of disease. Mr. Simmons explained that gray water has a lot of pathogens and all wastewater needs to be treated correctly. On-site sewage systems are designed and operate better with the waters combined because the biota work together. Vice Chair Pendergrass expressed concerns about removing gray water from black water and impacts on system performance. He added that the idea of going to every independently designed and installed system in the state to measure performance would be prohibitive. Mr. Simmons agreed that he thought the approach would require far more resources than we now have. He added that the current rule allows use of systems that the petitioner mentions but they require contracts with trained service providers. Temple Lentz, Board Member, agreed with statements of other Board members at this time.

Motion: The Board denies the petition for rulemaking to amend chapter 246-272A WAC, On-site Sewage Systems, for the reasons articulated by the Board. The Board directs staff to notify the petitioner of its decision.

Motion/Second: Member Bessermin/Member Kutz. Approved unanimously

8. UPDATE—HEALTH IMPACT REVIEWS

Cait Lang-Perez, Board Staff, and Lindsay Herendeen, Board Staff, introduced themselves and provided a brief background on Health Impact Reviews (HIRs). Ms. Lang-Perez discussed the legislative history and purpose of health impact reviews as well as the process for completing HIRs. She detailed the process for developing logic

models, conducting key informant interviews, and establishing strength-of-evidence criteria for the pathways in their logic models. Ms. Lang-Perez noted that HIRs do not contain recommendations and staff often testify before the legislature regarding the findings of the reviews.

Ms. Herendeen recapped the number of completed HIRs since fiscal year 2014. She said that due to the COVID-19 pandemic, legislative members were instructed to limit the number of bills introduced (including companion bills) during the 2021 Legislative Session, which resulted in fewer HIRs completed this session. However, she said the HIRs completed this session were on larger, omnibus bills that covered broader topics than in a typical year. Ms. Herendeen identified the topic areas of HIRs completed for the 2021 legislative session and noted that many requests received are related to the social determinants of health. She said that the team completed their 100th HIR this year. Ms. Herendeen said that in a typical year, staff reach out to legislative members to educate them on HIRs and how they can submit requests for a review; however, outreach this year was impacted by the COVID-19 pandemic. Ms. Herendeen also said that the COVID-19 pandemic affected the number of times staff were asked to provide testimony on HIRs this year, as legislative committees prioritized testimony from community. She detailed notable bills that passed during the 2021 legislative session that the team conducted HIRs on, including a bill related to eliminating school lunch co-pays. Ms. Herendeen discussed the team's process for soliciting feedback on the HIR process, content, and use of HIRs by legislators. She noted three new ways HIRs are being used, as identified by legislators this year: 1) used to advocate for bill passage on the floor, 2) used to pass a budget proviso, and 3) used for legislators to gain personal knowledge and inform their future policy development.

Ms. Lang-Perez detailed two bills that passed during the 2021 legislative session that require other agencies—Joint Legislative Audit and Review Committee and the Office of Financial Management—to inform state equity work, in which the HIR team is providing technical assistance.

Member Peterson thanked the team for their presentation and their work. She asked if the team can meet demand or whether they have to deny requests. Ms. Lang-Perez said that they do often have a large queue of HIR requests and sometimes legislators elect to not submit requests based on the queue and timeliness of receiving the report. She noted that the team is hiring another HIR analyst.

Member Crawford commended the team and said she is appreciative that legislators are using these reports. She asked whether the team plans to continue outreach in the future given the number of organic requests this year. Ms. Herendeen said that yes, they intend to reach out each session, especially to new members to ensure they know this service is available to them. She also discussed sharing information at legislative assembly days and with legislative staff directly. Ms. Lang-Perez added that the team received guidance from legislators to specifically target outreach to freshman legislators.

Member Lutz asked whether some of the HIR findings are contrary to what legislators expect based on the type of legislation. Ms. Herendeen said that yes, often when legislators make requests they do not know what to expect in HIR findings, whereas

sometimes other legislators have an idea of what will come from the review. She said that the team often doesn't know what the results will be until jumping into the literature and conducting key informant interviews. She used an example of HB 1312 regarding restricting solitary confinement, where the logic model has changed along the way with what the team has learned.

Vice Chair Pendergrass stated that this process has moved solely from literature reviews to qualitative research, all while being non-partisan. He asked whether the team can speak to access to literature. Ms. Lang-Perez said that both team members have clinical faculty appointments at UW to help maintain broad access to literature and that is critical to the work. She said that connecting the qualitative interviews and literature reviews together is integral to their process and work. Ms. Herendeen said that they have expanded the amount of key informant interviews that are conducted, even during legislative session with a quick, 10-day turnaround. This is to ensure they are being as thorough as possible, especially on proposed policy that Washington may be a leader in. Interviews are conducted with individuals with expertise, regardless of whether they support or oppose the bill.

Member Lutz asked whether the 10-day turnaround during session is sufficient to complete HIRs. Ms. Lang-Perez explained that the 10-day turnaround is a statutory requirement, but that the timeframe allows for more reviews to be conducted. When necessary, staff scope requests so that they address the question or provision in which a requesting legislator is most interested.

Vice Chair Pendergrass said that this is a wonderful tool to help inform policy, and that he applauds this effort and it has been very successful.

9. UPDATE—CHAPTER 246-760 WAC, AUDITORY AND VISUAL STANDARDS – SCHOOL DISTRICTS

Vice Chair Pendergrass introduced the topic and provided background on the Board's authority to adopt rules related to auditory and visual screening in schools in Washington. He discussed the Governor's emergency proclamation related to limited opening of schools during the COVID-19 pandemic, and its impact on conducting auditory and visual screenings. He reminded the Board that they took action at the January meeting to approve guidance for schools on how best to conduct auditory and visual screenings.

He introduced Sam Pskowski, Board Staff to provide additional detail.

Ms. Pskowski recapped the guidance approved by the Board in January. She said that the guidance was only in effect through the remainder of the 2020-2021 school year, and that further guidance will be provided to schools for the upcoming 2021-2022 school year. She noted that the rules allow schools to conduct catch up testing for students who may have been missed last year.

Vice Chair Pendergrass clarified that this screening is different than the Board's work on newborn screening. He commented that short distance vision issues are increasing among children.

Member Bessermin commented that as a former school teacher this is a very important issue and appreciates the research and guidance provided to schools.

10. UPDATE—CHAPTER 246-101 WAC, NOTIFIABLE CONDITIONS—COVID 19 PERMANENT RULE IMPLEMENTATION & EMERGENCY UPDATE

Member Kutz provided a brief background information on the rules (materials on file).

Kaitlyn Donahoe, Board Staff, provided two updates related to the notifiable conditions chapter: emergency rulemaking for COVID-19 and permanent rulemaking. She said the Board has authority to adopt rules for prevention and control of communicable disease, and notifiable conditions falls under that authority. Ms. Donahoe said that information provided by these regulated entities helps protect the public by tracking and preventing disease outbreaks. She provided a timeline of the rulemaking efforts since 2018 and noted that permanent rules recently adopted go into effect January 31, 2022. Ms. Donahoe said that the emergency rules adopted by the Board in June are currently in effect.

Ms. Donahoe reminded the Board that the impetus for emergency rulemaking came through CARES Act and subsequent guidance from the Department of Health and Human Services. She said four emergency rules have been adopted by the Board to date, and that there have been no changes to the rule language in the last three rules. Ms. Donahoe said that staff received a request from DOH and local health jurisdictions (LHJs) to adjust the reporting timeframe for LHJs for COVID-19 cases to better reflect current capacity and for DOH to receive these data. She shared information on next steps, including what would occur if a fifth emergency is adopted by the Board to incorporate these changes.

Ms. Donahoe said the Administrative Procedures Act requires initiation of permanent rulemaking if subsequent emergency rules are adopted. She said the Board filed a CR-101 to integrate provisions in the emergency rule into the permanent rules. She noted that the scope of this rulemaking is intentionally narrow to accommodate a brief timeline, and once the permanent rules are in effect, there is no need for the Board to continue adopting emergency rules. Ms. Donahoe shared an anticipated rulemaking timeline, noting that the Board cannot adopt new permanent rules until the current permanent rules adopted by the Board in March 2021 are in effect. Member Kutz thanked Ms. Donahoe for her work on this topic and said the Board is close to finishing out this work.

Member Crawford asked for clarification on the timeline of reporting changes in the fifth emergency rule. Ms. Donahoe said the changes pertain to LHJs only and would require reporting of new COVID-19 cases to DOH, sending investigation reports to DOH upon completion, and reassigning cases to DOH (as needed) within one business day instead of immediately.

Member Bessermin agreed that the emergency rule change needs to happen now and thinks the one-day extension is necessary. She said it will provide some additional time for health districts to do their work.

Member Lentz noted she is supportive, and it is necessary and important and have rules that folks can follow and meet.

Vice Chair Pendergrass said it would be advantageous to look at the language for the permanent rule that provides flexibility to act on future pandemics so that we do not need to adopt numerous emergency rules.

Member Kutz thanked Ms. Donahoe and other staff working on this to get things done.

Motion:

The Board adopts a fifth emergency rule to continue the designation of COVID-19 as a notifiable condition, require reporting of essential testing and demographic data to improve the public health response to COVID-19, and clarify reporting timelines for local health jurisdictions. The Board directs staff to file a new CR-103E to extend WAC 246-101-017 which will become effective immediately upon filing with the code reviser.

Motion/Second: Kutz/Bessermin. Approved unanimously

11. BOARD MEMBER COMMENTS

Vice Chair Pendergrass called for any comments.

Member Bessermin thanked Vice Chair Pendergrass and said it's good to see everyone. Member Kutz echoed the previous comments, and said he's looking forward to coming back together to open face to face meetings. He announced he left his job with the Cowlitz Indian Tribe and he's taking on a new job with the Suquamish Tribe.

Member Lutz said we are at a different place with COVID-19 than we were at a few weeks or months ago based on the data he's seen. He said although there were comments about Secretary Shah's report, we are at a concerning place in our pandemic response. Children get COVID-19, and they are a-symptomatic. We're seeing incredibly high attach rates of the Delta variant. He said the message is that the pandemic is still raging and the next couple weeks will show more. Member Bessermin has lost 4 friends to COVID-19 and another close friend came down with it this week. She said her husband went to the Veteran's hospital and luckily just had a sinus infection and commented that it's scary out there. Member Lutz said it's interesting when he looks at data, on Monday there were 552 patients hospitalized, and by Tuesday, 853, and that hospitalizations ranged across all age groups, both seniors and younger individuals. He said the variant doesn't discriminate by age, and it is a behavior sensitive virus and very transmittable. He said an ounce of prevention is worth a pound of cure.

Vice Chair Pendergrass echoed some of Member Lutz's comments. He said vaccines are pointing to decreasing symptoms and decreasing hospitalizations. He said the vaccine provides a longer and more durable response than getting the disease. He commented that our e-rooms are starting to be full and hospitals are talking about diversions again and no elective surgeries. He urged the public to be careful and think about who you're going to be with. Vice Chair Pendergrass thanked the Board staff and the public. He encouraged all to apply evidence-based approaches to care.

ADJOURNMENT

Tom Pendergrass, Board Vice Chair, adjourned the meeting at 2:20 p.m.

WASHINGTON STATE BOARD OF HEALTH

Tom Pendergrass, Vice Chair

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov TTY users can dial 711.

PO Box 47990 • Olympia, Washington • 98504-7990
360-236-4110 • wsboh@sboh.wa.gov • sboh.wa.gov