

NEBRASKA STATE BOARD OF HEALTH MEETING
MINUTES – MARCH 11, 2024

ATTENDANCE NOTIFICATION. David Reese, Chair, called a regular meeting of the State Board of Health to order at 1:01 PM on March 11, 2024, in the Goldenrod Conference Room in the Lower Level of the Nebraska State Office Building in Lincoln. Copies of the agenda were mailed electronically to board members and other interested parties prior to the meeting and posted on the Health and Human Services website and bulletin board. The following members were present: J. Paul Cook, MD; Russell Crotty, OD; Jaime Dodge, MD; Diane Jackson, APRN; Michael Kotopka, DDS; Mark Patefield, PharmD; David Reese, MHA; Daniel Rosenthal, PE; Doug Vander Broek, DC; Dan Vehle. Quorum was met. Staff and others in attendance: Monica Gissler, Caryn Vincent
Board members not in attendance: Heather Cramer, RN; Josh Vest, DPM.

APPROVAL OF AGENDA AND MINUTES. Mr. Reese asked if there were any changes to the agenda for the meeting today and the minutes from the January 22, 2024 regular meeting and the February 14, 2024 special meeting. Dr. Vander Broek made a motion to approve the agenda and draft minutes, seconded by Ms. Jackson; voting yes: 10 (Cook, Crotty, Dodge, Jackson, Kotopka, Patefield, Reese, Rosenthal, Vander Broek, Vehle); voting no: 0; not voting: 0. Motion carried.

UPDATES, REPORTS

Dr. Tim Tesmer, Chief Medical Officer, Division of Public Health reported on behalf of Director Menefee and Dr. Donahue. There is an attachment to these minutes with information on Measles Preparedness in Nebraska, Respiratory Virus Snapshot, and Updated Seasonal Respiratory Virus Guidance from CDC.

Licensure Unit – Lindsay Braddock, Unit Administrator, reported on the Licensing Information System Stabilization Project. They hope to have the new system MyLicense in place by December 2024.

Sean Loving is the new Program Manager for Behavioral Health and Consumer Services, replacing Kris Chiles.

The Board of Behavior Analysts will hold their first meeting on March 12, 2024.

Board of Health Chair – Mr. Reese reported the following:

1. Has anyone attended any professional board meetings that they would like to report on?

It is important that you let Monica know in advance when you plan to attend a meeting, and if you plan to attend the entire meeting or just a portion. When you arrive at the meeting, please make a point of introducing yourself to the Board staff, and then to the full Board as the Board of Health liaison. This applies to both in-person and WebEx meetings.

Dr. Vander Broek attended the February 7, 2024 Board of Chiropractic, and the February 27, 2024 Board of Athletic Trainers. He spoke about Board of Health members being able to attend Closed Sessions and being subject to the confidentiality rules.

2. Be on the lookout next month for the annual Statements of Accountability and Disclosure to come out, and please pay prompt attention to submitting yours.
3. Bud Synhorst, John Kuehn, and Don Ostdiek have resigned from the Board of Health and I want to thank them for their service. We do have one new member recently appointed by Governor Pillen: J Paul Cook, MD is serving the remainder of Dr. Tesmer's physician term. Dr. Cook is a family physician in West Omaha.
4. Once again, I want to thank everyone who was able to make time to participate in our special meeting on February 14th.

Credentialing Review – Mr. Rosenthal, Committee Chair, presented.

<https://dhhs.ne.gov/licensure/Pages/Credentialing-Review.aspx>

Mr. Rosenthal reported that the applicant group from the review on Hearing Care Professionals will be submitting a new proposal with a narrower scope. They meet next on April 2nd.

There has been an application for a credentialing review for Occupational Therapy. The start date, per the applicant group, will not be until Fall 2024.

Report from Subcommittee on the Credentialing Review Process – Dr. Crotty reported on the recommendations from the Board of Health subcommittee.

Before taking any public comments about these recommendations, Chairman Reese stated that comments would be limited to five minutes each.

They recommend the Credentialing Review process be updated. Changes are recommended in the areas of statute, regulation, administration, and procedures of credentialing review, and are attached to these minutes.

Mr. Reese asked for a motion to accept the recommendations from the subcommittee, including Dr. Crotty serving as the Board of Health liaison any DHHS committee formed for review of this program; Ms. Jackson made a motion and Dr. Dodge provided a second. Voting yes: 10 (Cook, Crotty, Dodge, Jackson, Kotopka, Patefield, Reese, Rosenthal, Vander Broek, Vehle); voting no: 0; not voting: 0. Motion carried.

Rules and Regulations Committee – Dr. Dodge, Committee Chair, reported.

<https://dhhs.ne.gov/Pages/DHHS-Regulations.aspx>

1. Review the following proposed rules and regulations:
 - 181 NAC 2 – Screening of Infants for Inherited and Congenital Infant or Childhood-On Set Diseases. The proposed changes update chapter name; update definitions; update terminology; add clarification language; update approved standards of collection; update section headings and formatting; correct punctuation and typographical errors; remove

duplicative statutory language from the regulations; and restructure the regulatory chapter.

A public hearing was held on November 8, 2023, there was no testimony provided in writing and no testimony at the hearing; see attached Hearing Summary.

- 175 NAC 12 – Skilled Nursing Facilities, Nursing Facilities, and Intermediate Care Facilities. The proposed regulations will remove duplicate statutory language from the regulations, and any repetitive language found in 175 NAC 1, which governs general requirements and processes that apply to all health care facilities and services cited in the Health Care Facility Licensure Act. Other proposed changes include updating requirements for standards of operation, care, and services; clarifying language; updating food service director qualifications; updating definitions, terminology, section headings, and formatting; and restructuring the regulatory chapter.

A public hearing was held May 13, 2023, and a second public hearing held on January 17, 2024. At the May 13, 2023, public hearing there was one individual that testified at the hearing. There were three individuals that provided written email comments. Changes are being made based off the comments from this public hearing. At the January 17, 2024, public hearing there was no one that testified at the hearing and three individuals provided written email comments. One change is being made to the regulations after this public hearing. The hearing summaries are attached for both public hearings.

Dr. Dodge made a committee motion to accept the review of the proposed rules and regulations for 181 NAC 2 and 175 NAC 12. voting yes: 10 (Cook, Crotty, Dodge, Jackson, Kotopka, Patefield, Reese, Rosenthal, Vander Broek, Vehle); voting no: 0; not voting: 0. Motion carried.

Professional Boards Committee. Dr. Crotty, Committee Chair, reported. They conducted 5 interviews in the morning and recommend the following appointments.

Board of Nursing

Eric Rogat, RN, from Battle Creek, for the partial term through November 30, 2024, replacing Ms. Smutny.

Board of Dentistry

Takanari Miyamoto, DDS, PhD, MBA, MDS, CAGS, of Omaha for the partial term through November 30, 2024, replacing Dr. Thomas.

Board of Audiology and Speech Language Pathology

Samantha Penas, SLP, from Lincoln, for the partial term through November 30, 2024, replacing Ms. Anderson.

Public

Elizabeth Bailey, from Seward, to the partial term through November 30, 2028 on the Board of Massage Therapy, replacing Ms. Roberts.

Elizabeth Bailey, from Seward, to the partial term through November 30, 2024 on the Board of Podiatry, replacing Mr. Sawyer.

Dr. Crotty made a committee motion to approve the proposed professional board appointments. voting yes: 10 (Cook, Crotty, Dodge, Jackson, Kotopka, Patefield, Reese, Rosenthal, Vander Broek, Vehle); voting no: 0; not voting: 0. Motion carried.

We are still seeking applicants for a few professional member positions.

<https://dhhs.ne.gov/licensure/Pages/Board-Requirements-and-Vacancies.aspx>

Public Health, Education and Legislation – Dr. Patefield, Committee Chair, reported. In the morning committee meeting they reviewed the status of legislative bills introduced this session. There are 29 bills of interest to the Board of Health. Chairman Reese submitted testimony for LB 857 to Create the Nebraska Prenatal Plus Program and LB 1232 to Prohibit certain actions under the Pharmacy Benefit Manager Licensure and Regulation Act.

Approval of Committee Reports. Mr. Reese asked for a motion to approval all committee reports. Dr. Crotty made a committee motion to approve them, with a second by Ms. Jackson. Voting yes: 10 (Cook, Crotty, Dodge, Jackson, Kotopka, Patefield, Reese, Rosenthal, Vander Broek, Vehle); voting no: 0; not voting: 0. Motion carried.

PUBLIC COMMENTS. None.

UNFINISHED BUSINESS.

- Nebraska Medical Association Workgroup on Credentialing Review – Dr. Vander Broek reported that there have not been any actual additional meetings, but they continue to receive comments on the process. There has been broad representation by many varied healthcare associations.

NEW BUSINESS. None.

TOPICS AND PREPARATION FOR NEXT MEETING. The next regular Board of Health meeting will be Monday, June 10, 2024. Location will be Goldenrod conference room, Lower Level of the State Office Building, in Lincoln.

ADJOURN. There being no further business, Dr. Patefield made a motion to adjourn, with a second by Dr. Crotty; all in favor by voice vote. Meeting adjourned at 2:20 PM. Minutes were taken by Monica Gissler and were approved by the State Board of Health on June 10, 2024.

NOTE: If you would like to receive these minutes electronically, please send a request to the email address below. Please also inform staff if you would like to be removed from this distribution list altogether.

If you would like any attachments mentioned in these minutes, or have other questions, please contact Monica Gissler, 402/471-2948, or email at: monica.gissler@nebraska.gov. Board of Health: <https://dhhs.ne.gov/licensure/Pages/Board-of-Health.aspx>

6/12/24, mcg

Summary of Credentialing Review Subcommittee Recommendations:

Subcommittee Members: Russell Crotty, OD; Dan Rosenthal, PE; Dan Vehle; Doug Vander Broek, DC

We recommend the Credentialing Review process be updated. To this purpose, changes are recommended in the areas of statute, regulation, administration, and procedures of credentialing review. We as a subcommittee would recommend DHHS work on the changes in collaboration with stakeholders providing input on the details. (Involving stakeholders supports the discussion the Allied Health Group had at the meeting hosted by the NMA about both groups collaborating with DHHS during the process). It would also be helpful for Nebraska DHHS to submit a written report about changes that are made to the Procedures Manual to the Board of Health (BOH), with opportunity for discussion at a meeting in order for BOH members to be made aware of any changes that address our involvement in the Credentialing Review process, also known as 407.

The specific recommendations are as follows:

Factors and criteria in considering proposals:

- Modify/clarify criteria on which proposals are to be considered [statutory changes needed]
- Modify/clarify considerations that should be used by review bodies when evaluating how proposals meet or fail to meet each criterion [regulatory changes needed]

Preliminary steps when proposals are approved for review

1. Proposed statutory language should be a required part of the proposal from the applicant group (Administrative)
2. Notify affected licensing boards of 407 review applications so they have the opportunity (if not expectation) to provide input [Regulatory]
3. Clarify how, and at what point(s) in the process, licensing boards would/should provide input or recommendations to the Technical Review Committee (TRC) and/or BOH. Clarify whether such input is requested as a step in the process and expected, or merely invited at the discretion of the licensing board. [Regulatory]
4. Change questions that Applicant groups are expected to address in their applications to provide information to reviewers [Administrative]
5. Shorten total time frame for reviews from 12 months to 9 months (how much time needs to elapse between meetings of TRC, e.g.?) [administrative/(regulatory?)]
6. Develop improved orientation about the 407 process, with a standardized outline, for TRC members and BOH members, which reflects purpose of the program stated in

statutes and includes the review considerations that are outlined in regulations [administrative]

Selection of TRC members

Establish protocols for recruiting TRC volunteers [administrative]

Enhance opportunities for vetting TRC volunteers for potential conflicts of interest prior to appointment [administrative]

TRC phase

Establish requirements/expectations for TRC members who are participating virtually to better ensure engagement (TRC members attending virtually should have video engaged at all times unless brief break is required/requested. TRC members attending virtually should have a reliable internet connection or will be asked to attend meetings in person going forward) [administrative]

Provide templates or guidelines for TRC meeting agendas that better assure a standardized approach to allowing participation and engagement and input from proponents and opponents and other interested parties; clarify role of 'public hearing' in relation to other meetings of the TRC; enable opponents and proponents to get clear sense of committee concerns or suggestions while there is still an opportunity to amend proposals prior to a vote; clarify how & when during the process 'ancillary recommendations' could be developed by the TRC. [administrative]

**Modify and clarify how, and when, proposals may be amended during consideration by TRC in the interests of achieving Credentialing Review Program objectives [administrative and/or regulatory change See 172 NAC 4.006]

Reference: 006. AMENDING OR WITHDRAWING A PROPOSAL. A proposal may be amended only by the applicant group and only with the approval of a majority of the technical review committee members. A proposal can only be amended prior to the public hearing on the proposal. The applicant group may withdraw the proposal at any time.

Discussion: Dr. Vander Broek stated that if an amendment was made to the proposal after the public hearing that would be considered a 'substantial change', a second public hearing would be possible and required. DHHS staff confirmed this to be the case. Does this need clarification in regs to state that an amendment can be made after the initial public hearing or is the current language adequate?

Board of Health phase

Clarify if BOH 'report' can consist of a 'neutral' recommendation (in case of a tie vote, e.g.) [requirement for BOH 'report' is described in statute 71-6225...may require statutory change or at least definitive legal interpretation]

Clarify and standardize protocols for Credentialing Review Committee meetings, including: how/when opponents and proponents may provide input; who votes; whether votes are required/expected on each criterion or simply on proposals in their entirety;

whether CRC can offer 'ancillary recommendations'. [administrative]

Other

Current statute states that the 'Director' (Director of DHHS Division of Public Health) should issue the third report. Administratively the Chief Medical Officer currently writes the third report. Why do the current procedures differ from the statutory language?

[administrative change, not currently following statute, needs clarification. Reference on next page].

Clarify process for approval of 'final reports' from TRC and BOH reviews. When these are drafted by staff, proponents and opponents should be given an opportunity to review and offer input or corrections prior to adoption of final reports that are given to the Director and legislature. [administrative]

Provide more comprehensive orientations about the 407 process to legislature (especially to HHS Committee) [administrative]

For Reference regarding Director vs CMO writing the 3rd/final report:

FROM STATUTE:

71-6226. Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (4) of section 71-6224. The final report shall be submitted electronically to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than twelve months after the application is submitted to the director and found to be complete and shall be made available electronically to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

FROM DHHS CREDENTIALING REVIEW PROCEDURE MANUAL:

Section II, #20:

The Director of Public Health is required to prepare a report on each proposal. The Director's report provides the Legislature with reviews that are at least partially based upon an administrative analysis of credentialing proposals. The report reflects consideration of the potential fiscal impact of proposals to a much greater degree than do the other reports, as

well as the cumulative effect of multiple proposals and the effect of a proposal on current regulatory administrative systems. Directors are required to utilize the statutory criteria to formulate their recommendations.

3/1/24