

MINUTES OF THE MEETING OF THE
INDIANA DEPARTMENT OF HEALTH
EXECUTIVE BOARD
January 11, 2023

The in-person and virtual (Microsoft Teams) meeting of the Executive Board of the Indiana Department of Health (IDOH) was called to order at 10:30 am in the Robert O. Yoho Executive Board Room of the IDOH building by Brenda Goff, Chair. The following Board members were present for all or part of the meeting (in-person or via teams):

Naveed Chowhan, MD, FACP, MBA
Brenda Goff, HFA (Chair)
Joanne Martin, DrPH, RN, FAAN
Holly Robinson, MD
Suellyn Sorensen, PharmD, BCPS (via Teams)
Patricia Spence, PE
Stephen Tharp, MD (Vice Chair)

Those not able to attend:

Blake Dye
Martin Hanneman, DDS
Robin Marks, DVM
Shelley Rauch, HFA
Kristina M. Box, MD, FACOG, Secretary

The following staff members were present for all or part of the meeting (in-person or via teams):

Pam Pontones, Deputy Health Commissioner of Local Health Services
Lindsay Weaver, MD, FACEP, Chief Medical Officer
Shane Hatchett, Deputy Health Commissioner & Chief of Staff
Amy Kent, Deputy Health Commissioner & Chief Strategy Officer
Megan Lytle, Assistant Commissioner, Public Health Protection
Mike Mettler, Director, Environmental Public Health
Eric Hawkins, State Epidemiologist
Kelly MacKinnon, JD, Chief Legal Counsel
Rebecca Brelage, Office of Legal Affairs
Jeni O'Malley, Chief Communications Officer

Guests:

Eric Essley, Leading Age Indiana
Terry Miller, HOPE
Becky Bants, HOPE
Charlie Hopper, Indiana Builders Association

Call to Order

Brenda Goff, Chair, stated that a quorum was present and called the meeting to order at 10:30 am. She then asked if Board members had any known conflicts of interest to declare. Hearing none she proceeded with the meeting.

Minutes

Ms. Goff asked for discussion and/or corrections to the minutes of the November 9, 2022, Executive Board meeting. Hearing none, she entertained a motion for approval. On a motion made by Dr. Stephen Tharp, seconded by Joanne Martin and passed by majority roll call vote of in-person and virtual attendees, the Board approved the minutes as presented.

OFFICIAL BUSINESS OF THE INDIANA DEPARTMENT OF HEALTH

Secretary's Report

Shane Hatchett, Deputy Health Commissioner and Chief of Staff provided the Secretary's Report. Dr. Box is tied up in legislative meetings at the State House. Shane reminded the Board members there is a Public Health Day: Investing in Hoosiers Lives scheduled for Thursday, January 26 from 11:00 am to 1:00 pm at the State House in the North Atrium. This event will hopefully demonstrate to legislators the importance of public health. The Executive Board members have received an invite to this event.

There is a new COVID variant circulating – XBB.1.5. 40% of the cases now are this new variant. The volume of RSV infections is trending down. The Labor of Love Summit is scheduled for December 8. Unfortunately, the infant mortality numbers have increased slightly from 2021 to 6.7 per 1,000 live births (up from 6.6 per 1,000 live births in 2020). The Maternal Mortality Report data from 2020 indicates that 80% of pregnancy associated deaths are preventable with 31% of these deaths attributed to overdoses.

Shane provided IDOH staffing updates:

- Megan Lytle is now the Assistant Commissioner for Public Health Protection (replacing Dr. Shirley Payne).
- Amy Kent is now the Deputy Health Commissioner and Chief Strategy Officer (formerly the AC for Consumer Services and Health Care Regulation Commission).
- Eric Hawkins is now the State Epidemiologist (formerly the Deputy State Epidemiologist).
- Pam Pontones is now Deputy Health Commissioner for Local Health Services (formerly State Epidemiologist).

Consumer Services and Health Care Regulation Commission

Discussion on Amendments to Residential Care Facilities Rule to comply with Federal Home and Community Based Settings (HCBS) Final Rule 410 IAC 16.2-5

Amy Kent, Deputy Health Commissioner and Chief Strategy Officer presented amendments to the Residential Care Facilities Rule 410 IAC 16.2-5 to comply with mandates of the federal HCBS Settings Final Rule for discussion. These rules changes are required under IC 16-28-2-11 and Indiana's approved Statewide Transition

Plan. The Indiana Department of Health (IDOH) licenses two types of long-term care facilities - residential care facilities and comprehensive care facilities. Residential care facilities, which are licensed, provide residential nursing care or administer medications prescribed by a physician. Comprehensive care facilities are licensed to provide more complicated nursing and medical services than residential care facilities but may have separate parts of the facility that operate as residential care facilities. Comprehensive care facilities are not required to be licensed as a residential care facility, but Indiana does do separate surveys for any residential sections. These rule amendments pertain to the residential care facilities or residential care portions of comprehensive care facilities.

On March 17, 2014, the Centers for Medicare & Medicaid Services (CMS) issued regulations, known as the HCBS Settings Final Rule, that define the settings in which it is permissible for states to pay for Medicaid HCBS. The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated and that support full access to the greater community. Community integration includes opportunities for residents who receive HCBS waiver funds to see employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services the community to the same degree as individuals who do not receive HCBS. These changes will maximize the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most integrated setting.

Indiana offers eight Medicaid HCBS programs that target specific groups. To be eligible for any HCBS program, you must meet Medicaid guidelines and HCBS program-specific eligibility guidelines. HCBS programs allow members to live in a community setting and avoid institutional placement. Indiana's HCBS programs are administered through the Family and Social Services Administration (FSSA). IC 16-28-2-11 provides "The state department shall amend rules concerning the licensure of a residential care facility to comply with federal law and regulation concerning the provision of HCBS in the Medicaid program in order for a residential care facility to qualify as a HCBS provider.

States must ensure all HCBS settings comply with the new requirements by completing an assessment of existing state standards including rules, regulations, standards, policies, licensing requirements, and other provider requirements to ensure setting comport with the HCBAS settings requirements. States must submit a transition plan to CMS that includes timelines and deliverables for compliance with 42 CFR 441.301(c)(4)(5), and Section 441.710 (a)(1)(2). States must be in full compliance with the federal requirements by the time frame approved in the transition plan but no later than March 17, 2023.

FSSA created a Statewide Transition Plan to assess compliance with the Final Rule and identify strategies and timelines for complying with the Plan as it relates to all FSSA HCBS programs. The HCBS Final Rule requires that all HCBS meet certain criteria, which includes:

- 1) The setting is integrated in and supports full access to the greater community;
- 2) The setting is selected by the individual from among setting options;
- 3) Each individual has a right to privacy, is treated with dignity and respect, and is free from coercion and restraint;
- 4) Provides individuals independence in making life choices; and
- 5) The individual is given choice regarding services and who provides them.

In residential settings owned or controlled by a service provider, additional requirements must be met:

- 1) The individual has a lease or other legally enforceable agreement providing similar protections;
- 2) Each individual must have privacy in their living unit including lockable doors;
- 3) Individual sharing a living unit must have voice of roommates;
- 4) Individuals must be allowed to furnish or decorate their own sleeping and living areas;
- 5) The individual controls his/her own schedule including access to food at any time;
- 6) The individual can have visitors at any time; and
- 7) The setting is physically accessible.

Any modification to these additional requirements for provider-owned HCBS residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

The HCBS Final Rule clarifies settings in which HCBS cannot be provided. These settings include: comprehensive care facilities that do not have separate residential sections, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals.

410 IAC 16-2.5 must be modified to conform to the Federal rule, as the rule requires states to ensure all HCBS settings comply with the new requirements by completing an assessment of existing state standard including rules, regulations, standards, policies and licensing requirements.

This is necessary to keep Federal funding, but more importantly it provides Indiana's vulnerable populations with opportunities to work, play, learn, and volunteer in the community. It also gives them rights to privacy and autonomy in their home, and protections from being evicted without a hearing before an Administrative Law Judge with experience and understanding of the issues specific to the type of facility involved.

In addition, the FSSA Division of Aging requested that a more complete definition of a provided "meal" because many individuals do not have monetary means to purchase food above and beyond what is provided at their facility. FSSA Division of Aging has received complaints that certain meals (primarily breakfast) provided have lacked substance (i.e. granola bar and a piece of fruit). Therefore, ensuring that balanced meals with an appropriate caloric distribution is necessary.

IDOH is also clarifying staffing expectations. The current rule requires a minimum of one awake staff member with CPR and First Aid training be present 24 hours a day. IDOH is changing the rule to a "nursing" staff member. This would permit a nurse aide or qualified medication assistant be present but requires more medical training and experience than a security guard or maintenance person to ensure that resident health emergencies can be met. The necessity for this rule change became apparent after a resident in a facility was found deceased when only a security guard was in the lobby.

IDOH has also updated the tuberculosis section in the rule to mirror the most recent guidance. This update will be easier for providers and residents alike as it is less restrictive than the previous requirements.

Ms. Goff asked for discussion and/or comments from the Board, staff and/or public. There was discussion about residents who continually complain about their roommate, who request candles or heating pads which can be a safety concern, and whether firearms can be allowed. Terry Miller, HOPE, asked when affected facilities would see the draft rule and Amy Kent stated the draft rule will go to Associations and other today.

Public Health Protection Commission

Discussion on Amendment to Residential On-Site Sewage Rule 410 IAC 6-8.3

Shane Hatchett, Deputy Health Commissioner and Chief of Staff presented amendments to the Residential On-Site Sewage Rule 410 IAC 6-8.3 for discussion. This rule amends 410 IAC 6-8.3 to update definitions and other provisions to reflect current terminology, standards, and best practices regarding the design, installation, construction, maintenance, and operation of residential on-site sewage systems.

In 2022, the General Assembly enacted HEA 1245, which amended IC 16-41-25-7 to provide that no local ordinance may impose requirements concerning residential on-site sewage systems that are more restrictive than IDOH rules. Any more restrictive rules are void as of June 30, 2023. 410 IAC 608.3 sets minimum standards that are intended to be supplemented by local ordinances. The local ordinances take into account the unique geological and other factors that affect systems in the local area. Because these local ordinances will be voided after June 30, 2023, it is necessary to amend the IDOH rules to replace certain requirements that will be voided.

The rule amendments allow local health departments (LHD) to opt into some, but not all, of the requirements currently imposed by local ordinances. LHDs must seek approval from the IDOH and provide justification before imposing these "opt-in" requirements. The rule also requires IDOH to consult with a group of stakeholder representatives (the members of the Technology New to Indiana Committee) before approving a LHD's request to "opt-in" to requirements. This review process will prevent LHDs from adopting requirements that are more restrictive than their ordinances that are being voided effective July 1, 2023.

The rule also adds two new statewide requirements. Those are the installation of an outlet filter removal device and a float tree when certain systems are installed or modified. These two changes follow current best practices and make future maintenance and repairs safe and less expensive. Because the rule has not been updated in a number of years, this rule-making also makes updates to reflect current industry standards.

IDOH submitted this rule for moratorium review on December 22, 2022 and received moratorium exception approval on December 27, 2022. A Notice of Intent to Adopt a Rule has been posted in the *Indiana Register*.

Ms. Goff asked for discussion and/or comments from the Board, staff and/or public. Patricia Spence inquired and was assured the public will be able to provide comments at the public hearing. Dr. Stephen Tharp asked how small communities/properties with failing systems would be handled. Mike Mettler stated that a survey to identify these types of systems is being established.

Other

Legislative Update

Amy Kent, Deputy Health Commissioner and Chief Strategy Officer provided an update on current legislation. SB 4 covers the the funding aspect of the Governor's Public Health Commission recommendations. LHDs must "opt in" to receive the increased funding and agree to perform the core public health services for five years. LHDs that "opt out" will continue to receive the funding at their current rate and will have the opportunity to "opt in" in one year. Current calculations total \$203 million if all LHDs "opt in".

Distribution

Ms. Goff thanked staff for the professional new hire and separation reports and summary of final orders.

Adjournment

Hearing no additional comments from the Board, staff and/or public, Ms. Goff adjourned the meeting at 12:00 pm. The next meeting is scheduled for March 29, 2023.