

## **PUBLIC HEALTH COUNCIL**

A regular meeting of the Massachusetts Department of Public Health's Public Health Council was held on Tuesday, October 24, 2006, 10:00 a.m., at the China Trade Center, 2 Boylston Street, John Daley Conference Room -5<sup>th</sup> floor, Boston, Massachusetts. Members present were: Chair Paul J. Cote, Jr., Commissioner, Department of Public Health, Atty. Michael C. Hanson (arrived late during the staff presentation), Ms. Soo J. Kim, Atty. Jennifer A. Nassour, Mr. Albert Sherman (arrived late during the staff presentation), Mr. Gaylord Thayer, Jr., and Martin J. Williams, M.D. (arrived late during the staff presentation). Clifford Askinazi, M.D and Ms. Maureen Pompeo were absent. Also in attendance was Attorney Donna Levin, General Counsel, Department of Public Health.

Chair Cote announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Dr. Zi Zhang, M.D., MPH, Director, Health Survey Program, Center for Health Information, Statistics, Research, and Evaluation; Dr. Thomas Land and Ms. Lois Keithly, Massachusetts Tobacco Control Program; Mr. Steven Hughes, Director, Division of Community Sanitation; and Ms. Joan Gorga, Director, Determination of Need Program.

### **RECORD OF THE PUBLIC HEALTH COUNCIL MEETING OF SEPTEMBER 19, 2006:**

A Record of the Public Health Council Meeting of September 19, 2006 was presented to the Public Health Council for approval. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the Record of the Public Health Council Meeting of September 19, 2006 as presented.

### **PROPOSED REGULATION: INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 410.000 (MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION, STATE SANITARY CODE, CHAPTER II):**

Mr. Steven Hughes, Director, Division of Community Sanitation, accompanied by Deputy General Counsel James Ballin, presented the proposed regulations to the Council for informational purposes. He stated in part, "...We are proposing to implement the requirements of Ch. 123 of the Acts of 2005, An Act Relative to the Installation of Carbon Monoxide Alarms and Smoke Detectors in Residential Buildings. This Act, known as Nicole's Law, took effect on March 31, 2006 and requires that all residential housing that contains fossil fuel burning equipment or an attached garage contain carbon monoxide (CO) alarms. Primary jurisdiction for implementation and enforcement of this new law is with the Board of Fire Prevention. The Board of Fire Prevention has promulgated regulations at 527 CMR 31.00, Carbon Monoxide Alarms, which specify the requirements for CO alarms in residential dwellings in MA. Section 4(f) of the Act states

that: ‘The department of public health shall promulgate such rules and regulations as may be necessary to effectuate subsection (a) into the state sanitary code as established under section 127A of chapter 111.’ Therefore, we are proposing to amend the housing code in order to satisfy the statutory requirements set forth in section 4(f) of the Act. Since the Board of Fire Prevention has issued comprehensive regulations governing the requirements for CO alarms in residential dwellings in MA, these proposed amendments to the housing code mainly incorporate these requirements by reference to the appropriate Code of Massachusetts Regulations (CMR) citation. The amendments also refer to regulations issued by the Board of Examiners of Plumbers and Gas Fitters relating to CO alarms as well as regulations by the State Board of Building Regulations and Standards which is expected to promulgate regulations relating to CO alarms in new construction.”

The amendments specifically do the following:

1. Amend 105 CMR 410.351 to include smoke detectors and CO alarms equipment which owners are required to install and maintain in operable condition.
2. Amend 105 CMR 410.482 to require owners to provide CO alarms in compliance with regulations promulgated by the Board of Fire Prevention, Board of Building Regulations and Standards, and the Board of Examiners of Plumbers and Gas Fitters. This adds CO alarms to existing requirements for smoke detectors.
3. Amend 105 CMR 410.750 (N) to state that failure to provide CO alarms (along with existing requirement for smoke detectors) is a condition which is deemed to endanger or impair health or safety and therefore requires immediate correction.

Mr. Hughes further explained, “...The Board of Fire Prevention promulgated its new CO alarm requirements as emergency regulations to coincide with the effective date of the Act on March 31, 2006. The Department does not believe it is necessary to promulgate these amendments to the Housing Code as emergency regulations because the requirement to provide CO alarms in residential housing is already in effect under the Fire Prevention regulations. However, the Department is proposing these amendments to the Housing Code in order to satisfy the statutory requirements of the Act and to avoid confusion in the regulated community that relies on the Housing Code as the minimum standards for health and safety in residential dwellings.” A public hearing will be held in November and following the comment period, the regulations will return to the Public Health Council for final action.

**NO VOTE/INFORMATION ONLY**

**STAFF PRESENTATION: “TOBACCO USE AND OTHER HEALTH RISKS AND BEHAVIORS AMONG MASSACHUSETTS ADULTS: HIGHLIGHTS FROM THE BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM: A 20 YEAR RETROSPECTIVE”**, by Thomas Land, PhD, Massachusetts Tobacco Control Program, Center for Community Health Services, and Zi Zhang, MD, MPH, Health Survey Program, Center for Health Information, Statistics, Research, and Evaluation.

Dr. Zi Zhang made introductory remarks and highlighted the 2005 results of the survey as noted below.

Some Highlights from the Report: “A Profile of Health Among Massachusetts Adults, 2005” (A random digit dial telephone survey of adults 18 or older done in collaboration with the CDC. The 2005 Massachusetts sample size is 8,906 people) follow:

- Thirteen percent of Massachusetts adults surveyed reported their health was either fair or poor.
- Eight percent of Massachusetts adults surveyed reported 15 or more days of feeling sad, blue or depressed in the past 30 days.
- Nine percent of Massachusetts adults reported that they had 15 or more days of poor physical health in the past month.
- Nine percent of Massachusetts adults reported that they had 15 or more days of poor mental health in the past 30 days.
- Nine percent of Massachusetts adults (ages 18-64) surveyed reported being uninsured at the time of the survey.
- Eighty-seven percent of Massachusetts adults surveyed reported that they had a personal health care provider.
- Nine percent of Massachusetts adults reported that they had not seen a doctor at some point in the past year due to cost.
- Eighteen percent of Massachusetts adults surveyed reported that they were current smokers.
- Two percent of Massachusetts adults were heavy smokers (smoking more than 20 cigarettes per day).
- Fifty-six percent of Massachusetts smokers surveyed had stopped smoking for one day or longer in the past 12 months because they were trying to quit.
- Thirty-three percent of Massachusetts smokers were planning to quit in the next 30 days.
- Seventy-eight percent of Massachusetts adults surveyed reported living in a household where smoking was not allowed anywhere.

- Forty-five percent of Massachusetts adults were exposed to environmental tobacco smoke in the past 7 days.
- Sixteen percent of Massachusetts adults surveyed reported binge drinking at some point in the past month.
- Six percent of Massachusetts adults surveyed reported heavy drinking in the past month.
- Fifty-six percent of Massachusetts adults surveyed were overweight or obese based on their reported height and weight (BMI  $\geq$  25).
- Twenty-one percent of Massachusetts adults were obese based on their reported height and weight (BMI  $\geq$  30).
- Seventy-seven percent of Massachusetts adults surveyed reported some form of leisure time physical activity over the past month.
- Fifty-three percent of Massachusetts adults reported regular physical activity in the past month.
- Twenty-nine percent of Massachusetts adults reported consuming five or more servings of fruit and vegetables per day.
- Thirty-six percent of Massachusetts adults who had had their cholesterol checked were told by the doctor, nurse, or other health professional that their cholesterol was high.
- Twenty-five percent of Massachusetts adults reported that they had been told by a doctor, nurse, or other health professional that they have high blood pressure.
- Seventy-five percent of those with high blood pressure reported taking medication for that condition.
- Thirty-one percent of adults ages 50-64 years reported having a flu vaccine in the past year.
- Sixty-five percent of adults age 65 and older reported having a flu vaccine in the past year.
- Sixty-five percent of adults age 65 and older reported ever having a pneumonia vaccination.
- Six percent of Massachusetts adults surveyed reported that they had ever been told by a doctor that they had diabetes.

- Fourteen percent of Massachusetts adults surveyed reported that they had ever been told by a doctor that they had asthma.
- Ten percent of Massachusetts adults reported that they currently have asthma.
- Twenty-six percent of Massachusetts adults reported that they had been told by a doctor or other health professional that they had arthritis.
- Nine percent of Massachusetts adults reported that they had limitations in their usual activities because of arthritis.
- Nine percent of Massachusetts adults ages 35 and older reported that they had ever been told by a doctor, nurse, or other health professional that they had heart disease.
- Three percent of Massachusetts adults ages 35 and older reported that they had ever been told by health professional that they had had a stroke.
- Twenty percent of Massachusetts adults surveyed reported having a disability.
- Seven percent of Massachusetts adults reported that they had a disability that caused them to need help with routine activities.
- Thirty percent of adults ages 50 and older reported ever having had a blood stool test using a home kit to determine if their stool contained blood.
- Fifty-nine percent ages 50 and older reported having had a sigmoidoscopy or colonoscopy in the past five years.
- Eighty-four percent of women ages 40 and older reported having a mammogram in the past two years.
- Forty-one percent of adults ages 18-64 reported ever having been tested for HIV.
- Nine percent of Massachusetts adults ages 18-64 reported that they had been tested for HIV in the past year.
- Fifty-seven percent of Massachusetts adults surveyed reported ever having used an illicit drug.
- Eight percent of Massachusetts adults reported having used an illicit drug in the past 30 days.

- Among Massachusetts men, 6% reported experiencing sexual violence at some point in their lifetime.
- Among Massachusetts women, 17% reported having experienced sexual violence at some point in their lifetime.
- Among Massachusetts men, 14% reported that they had ever experienced intimate partner violence.
- Among Massachusetts women, 22% reported that they had ever experienced intimate partner violence.

Dr. Thomas Land presented data on smoking trends in Massachusetts and nationally, smoking prevalence by race and education and how the rates vary across the state by health insurance status and by health status. "...Trend lines are never perfectly smooth. Nevertheless, it is clear that smoking rates have declined steadily over the past twenty years. In 1986, 28% of Massachusetts adults smoked. That rate was only 18% in 2005. This difference translates to almost 500,000 fewer adult smokers in the Commonwealth...."

Dr. Lois Keithly, Director, Massachusetts Tobacco Control Program explained how the data presented has informed programmatic decisions at the Massachusetts Tobacco Control Program of DPH.

**No Vote/Information Only**

**DETERMINATION OF NEED PROGRAM:**

**COMPLIANCE MEMORANDUM: PREVIOUSLY APPROVED PROJECT NO. 4-1464 OF LINDEN PONDS, INC.: REQUEST FOR A SIGNIFICANT CHANGE:**

Ms. Joan Gorga, Director, Determination of Need Program, presented the request by Linden Ponds, Inc. for a significant change to decrease the number of beds and the Gross Square Feet (GSF) of new construction, change the level of the approved beds and decrease the inflation-adjusted maximum capital expenditure (MCE) for DoN approved but not yet implemented Project No. 4-1464, of Linden Ponds Retirement Community. Linden Ponds Retirement Community is located at 411 Whiting Street in Hingham, Massachusetts.

Ms. Gorga noted in part, "...The reason given for the decreased number of beds, and related decrease in GSF and MCE is the more specific knowledge of the needs of the patients that has been gained since the approval of the DoN. In addition, the developer of the CCRC will introduce a program of care for Alzheimer's and Parkinson's patients at the CCRC, which successfully utilizes a less intense level of care in early stages of the disease when patients are ambulatory and need support with activities of daily living and

psycho-social support rather than nursing care. Level IV beds would provide the level of care necessary for the Alzheimer's and Parkinson's program."

Ms. Gorga said further, "In reviewing the request from Linden Ponds for significant changes, Staff has examined whether the changes were reasonable in the light of past decisions, were not foreseeable at the time the application was filed and were beyond the control of Linden Ponds. Consistent with Council's past decisions, staff finds that the changes are reasonable, could not have been reasonably foreseen and were not reasonably within the control of Linden Ponds."

Staff noted that, "Comments on the significant changes requested by Linden Ponds were submitted by Andrew Levine of Donoghue, Barrett and Singal on behalf of Welch Healthcare and Retirement Group, Inc. Staff's memorandum to the Council dated October 24, 2006 (issued October 3, 2006) noted the Welch comments:

- If the conversion of Level IV beds is allowed, then the new distribution of beds by level of care should be locked into place. Once approved as Level IV, the beds should not be allowed to be converted back to Level II beds. Welch said that Linden Ponds should not be allowed to increase the number of licensed beds in the future.
- That the proposed Linden Ponds facility must be consistent with the conditions of approval of the DoN regarding the prohibition on Medicaid patients to a Type A CCRC nursing facility. Welch comments that this condition should be affirmed for the Level II patients at the Linden Ponds facility and the Level IV beds, if approved, should be similarly precluded from accepting Medicaid or Division of Transitional Assistance payments.
- Linden Ponds request for significant change was procedurally inconsistent with the DoN Regulations because the request was filed with the Department before proper notice of the DoN was issued. At the time the request was filed, June 6, 2006, the decision letter had not been issued by the Department and therefore the filing of the request should be disallowed."

Staff's responses to the above comments follow:

- Changes of the distribution of numbers of beds at specific levels of care within the licensed bed quota of a nursing facility are frequently requested and are granted by the Department's Division of Health Care Quality after review of the capability of a facility to provide a higher or lower level of care. Staff sees no reason why a CCRC should not also be allowed this flexibility after appropriate review by the Department. Increases in bed quota are usually only permitted through use of the 12-bed addition allowed once to each nursing facility in the state. Upon implementation of Project 4-1464, the 12-bed addition will be the only action permitted to increase the bed quota of Linden Ponds except for the filing of a new Determination of Need for a second project at the CCRC. Until

implementation of Project 4-1464, Linden Ponds may submit requests for significant changes including increases in the bed quota up to a total of 236 beds as approved in the Determination of Need.

- Decision letters issued in response to a request for a significant change include the phrase “All conditions attached to the original approval shall remain in effect.” The original condition stated “Linden Ponds, Inc. shall not admit Medicaid patients or seek Medicaid funds for residents of the CCRC. Linden Ponds Retirement Community, as a Type “A” CCRC long term care facility granted Unique Application status, is precluded from accepting Medicaid patients”. Level IV patients are not Medicaid patients but could receive payments from the Division of Transitional Assistance. Welch argues that that condition should be modified to include patients receiving Division of Transitional Assistance payments. The applicant has agreed to accept the condition and staff has attached the condition without ruling on the argument.
- It is true that the decision letter had not been issued for the Linden Ponds project No.4-1464, the Public Health Council had acted on and approved the project at the meeting of May 25, 2004. Unfortunately the Department failed to issue the decision letter and neither Linden Ponds nor the Department realized that the letter has never been issued until the filing of the request for amendment. It is not appropriate to penalize Linden Ponds for the administrative omission by the Department. The intent of the requirement that a DoN Award Holder may file amendments only after receipt of notice of DoN Approval is to prohibit the filing of amendments changing the terms of the proposal while the DoN is under review. The Decision Letter was issued on July 20, 2006.

In closing, Ms. Gorga said, “...Based on the staff analysis and findings, staff recommends approval with a condition of the proposed significant changes for Project No. 4-1464. This recommendation is based on the requirement that the changes are reasonable in light of past decisions, were not foreseeable at the time of the application and were beyond the control of Linden Ponds. Staff has added to the condition concerning the prohibition on accepting Medicaid patients an additional prohibition on accepting Division of Transitional Assistance patients.”

After consideration, upon motion made and duly seconded, it was voted unanimously to approve the request by **Previously Approved Project No. 4-1464 of Linden Ponds, Inc.** for a significant change to decrease the number of beds (from the approved 236 Level II beds to a total of 132 beds [88 Level II and 44 Level IV beds])and the GSF of new construction from 137,048 GSF to 98,718 GSF, change the level of approved beds and decrease the project’s MCE from \$28,212,116 (June 2006 dollars) to \$23,989,325 (June 2006 dollars) resulting in a cost savings of \$4,222,791 (June 2006 dollars). The MCE is itemized as follows:

Land Costs:	
Land Acquisition Cost	\$ 762,894
Site Survey & Soil Investigation	<u>60,000</u>
	822,894
Total Land Costs	
Construction Costs:	
Construction Contract	\$ 17,983,800
Architectural & Engineering Cost	870,386
Other: Builder's Risk & Fees	204,160
Other: Development Fees	1,086,981
Net Interest Expense During Construction	1,732,221
Major Movable Equipment	<u>1,082,000</u>
Total Construction Costs	\$ \$22,959,548
Financing Costs:	
Net Interest Expense	206,883
Total Financing Costs	206,883
Estimated Total Capital Expenditure	\$23,989,325

The amendment is subject to the following condition:

All conditions attached to the original approval of Project No. 4-1464 shall remain in effect and condition #1 is amended as follows:

Linden Ponds, Inc. shall not admit Medicaid patients or seek Medicaid funds for residents of the CCRC. Linden Ponds Retirement Community, as a Type "A" CCRC long term care facility granted Unique Application status, is precluded from accepting Medicaid patients and Division of Transitional Assistance patients.

**INFORMATIONAL BULLETIN ON ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED EXPENDITURE MINIMUMS:**

Ms. Joan Gorga, Director, Determination of Need Program, presented the Informational Bulletin on Annual Adjustments to the DoN Expenditure Minimums to the Council, noting that Determination of Need Regulations 105 CMR 100.020 require the Department of Public Health to adjust expenditure minimums (for inflation). After consideration, upon motion made and duly seconded, it was voted unanimously to approve and adopt the **Informational Bulletin on Annual Adjustments to DoN Expenditure Minimums** attached as Exhibit A and B to the Determination of Need Memorandum, dated October 24, 2006 (Issued October 17, 2006) which was presented to the Public Health Council. The Approved Bulletin is as follows:

**EXHIBIT A**

**ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED EXPENDITURE  
MINIMUMS**

Capital Cost Indices (Marshall & Swift):

	October 2005	October 2006
Region – Eastern	2338.1	2539.1
Massachusetts	1.10	1.10

$$\frac{2539.1}{2338.1} \times \frac{1.10}{1.10} = 1.086$$

Operating Costs (Global Insight):

	4 <sup>th</sup> Quarter 2005	4 <sup>th</sup> Quarter 2006
Skilled Nursing Facility	1.329	1.382
Hospital	1.36	1.412

$$\frac{(1.382 + 1.412)}{(1.329 + 1.36)} / 2 = 1.0391$$

**EXHIBIT B**

**ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED EXPENDITURE  
MINIMUMS**

**Capital Expenditures**

Project Type	October 1, 2005	Filing Year Beginning October 1, 2006
Equipment for non-acute care facilities and clinics	\$667,535	\$724,921
Total capital expenditure including equipment for non-acute care facilities and clinics	\$1,335,072	\$1,449,844
Capital expenditure, excluding major movable equipment, for acute care facilities and comprehensive cancer centers	\$12,516,300	\$13,592,292

**Operating Costs**

Project Type	October 1, 2005	Filing Year Beginning October 1, 2006
Nursing, Rest Homes and Clinics	\$623,693	\$648,053

The meeting adjourned at 10:55 a.m.

LMH/lmh

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Paul J. Cote, Chair