

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of October 16, 2013

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**PUBLIC HEALTH COUNCIL OF THE
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
Henry I. Bowditch Public Health Council Room, 2nd Floor
250 Washington Street, Boston MA**

Docket: Wednesday, October 16, 2013, 9:00 AM

1. ROUTINE ITEMS:

- a. Introductions
- b. Record of the Public Health Council Meeting of September 11, 2013 **(Approved)**

2. DETERMINATION OF NEED:

Project Number 5-3C26 for Transfer of Ownership of Jordan Hospital, Inc., of Plymouth to Beth Israel Deaconess Medical Center, Inc., of Boston **(Approved)**

3. FINAL REGULATION:

Proposed Amendments to 105 CMR 223.000: *Pediatric Immunization Program Assessment*, Pursuant to Chapter 139 of the Acts of 2012 **(Approved)**

4. FINAL REGULATION:

Proposed Amendments to 105 CMR 200.000: *Physical Examination of School Children* (with respect to BMI Reporting), Pursuant to M.G.L. c. 111, §§ 3 and 5; and M.G.L. c. 71, § 57 **(Approved)**

5. DRAFT REGULATION:

Informational Briefing on Proposed Amendments to 105 CMR 130.000: *Hospital Licensure*, 105 CMR 140.000: *Licensure of Clinics* and 150.000: *Licensing of Long-Term Care Facilities*, Regarding Provision of Information on Palliative Care and End-of-Life Options, pursuant to Section 103 of Chapter 224 of the Acts of 2012. **(Informational Briefing)**

Massachusetts Public Health Council

Presented below is a summary of the meeting, including time-keeping, attendance and votes cast.

Date of Meeting: Wednesday, October 16, 2013

Beginning Time: 9:09 AM

Ending Time: 11:01 AM

Attendance and Summary of votes

Board Member	Attended	Item 1 b.	Item 2	Item 3	Item 4
		Record of the Public Health Council Meetings of September 11, 2013	Project Number 5-3C26 for Transfer of Ownership of Jordan Hospital, Inc., of Plymouth to Beth Israel Deaconess Medical Center, Inc., of Boston.	Proposed Amendments to 105 CMR 223.000: <i>Pediatric Immunization Program Assessment</i> , Pursuant to Chapter 139 of the Acts of 2012	Proposed Amendments to 105 CMR 200.000: <i>Physical Examination of School Children</i> (with respect to BMI Reporting), Pursuant to M.G.L. c. 111, §§ 3 and 5; and M.G.L. c. 71, § 57
Cheryl Bartlett	Yes	Yes	Yes	Yes	Yes
Derek Brindisi	Yes	Yes	Yes	Yes	Yes
Harold Cox <i>*By Phone</i>	Yes	Yes <i>(phone)</i>	Yes <i>(phone)</i>	Yes <i>(phone)</i>	No <i>(phone)</i>
John Cunningham	Yes	(2 nd) /Yes	Yes	Yes	Yes
Michele David	Yes	Abstained	Yes	(M)/Yes	(2 nd) /Yes
Michael Kneeland	Yes	Yes	Yes	Yes	Yes
Paul Lanzikos	Yes	Yes	Yes	Yes	Yes
Denis Leary	Yes	Yes	Yes	Yes	Yes
Lucilia Prates-Ramos	No	---	---	---	---
Jose Rafael Rivera	Yes	(M)/Yes	Abstained	Yes	(M)/Yes
Meredith Rosenthal	Yes	Yes	(2 nd) /Yes	Yes	Yes
Alan Woodward	Yes	Yes	(M)/Yes	(2 nd) /Yes	Yes
Michael Wong	No	----	----	----	----
Summary	11 members attended <i>(1 by phone)</i>	10 Approved with votes <i>(1 by phone)</i>	10 Approved <i>(1 by phone)</i>	Approved 11 <i>(1 by phone)</i>	Approved with 10 votes

(M): Made motion

(2nd): Seconded motion

PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on Wednesday, October 16, 2013 at the Massachusetts Department of Public Health, 250 Washington Street, Henry I. Bowditch Public Health Council Room, 2nd Floor, Boston, Massachusetts 02108.

Members present were: Commissioner Cheryl Bartlett (chair), Department of Public Health, Mr. Harold Cox (participating by phone under Open Meeting Law remote participation guidelines), Dr. John Cunningham, Mr. Paul Lanzikos, Mr. Jose Rafael Rivera, Dr. Alan Woodward, Mr. Denis Leary, Dr. Michele David, Dr. Meredith Rosenthal, Dr. Michael Kneeland and Mr. Derek Brindisi

Absent members were: Dr. Michael Wong and Ms. Lucilia Prates-Ramos

Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Commissioner Bartlett called the meeting to order at 9:09 AM and reviewed the agenda.

ITEM 1b: Record of the Public Health Council Meeting of September 11, 2013

Commissioner Bartlett asked if there were any changes to the minutes of the Public Health Council meeting of September 11, 2013. No changes were recommended. Mr. Rivera made the motion to approve the minutes of September 11, 2013. The motion was seconded by Mr. Cunningham. Dr. David abstained from the vote. The minutes were approved with ten members voting in the affirmative and one abstention (Dr. David).

ITEM 2: DON: DETERMINATION OF NEED: Project Number 5-3C26 for Transfer of Ownership of Jordan Hospital, Inc., of Plymouth to Beth Israel Deaconess Medical Center, Inc., of Boston

Bernard Plovnick, Director, Determination of Need program, and Jere Page, Senior Program Analyst, DoN program, presented Project Number 5-3C26 for Transfer of Ownership of Jordan Hospital, Inc., of Plymouth to Beth Israel Deaconess Medical Center, Inc., of Boston. Mr. Page reported that community stakeholders, including the Mass. Nurses Association, Service Employees International Union (SEIU) and the Kingston Board of Selectmen had recommended longer time commitments changes in staffing plans as conditions of approval. The Department recommended approval based on the project plan and regulatory conditions governing transfer of ownership.

Following the presentation, Commissioner Bartlett opened the floor for discussion. She recognized Jerry Fishbein, vice president of SEIU, who expressed concerns about local control, job security, hospital transparency, community standards, and long term sustainability, drawing unfavorable comparisons between the proposed transfer of ownership and recent mergers involving Milton Hospital and South Shore Hospital. Commissioner Bartlett then recognized Jordan Hospital CEO, Peter Holden, who testified that the transfer of ownership was needed to prevent

closure of the hospital due to the changing health care environment. He reported that the transfer had strong community support and that the proposal had received unanimous approval from the hospital board of directors. Kevin Tabb, CEO of Beth Israel Deaconess Medical Center then testified, emphasizing the strength of community support in Plymouth. In response to questions from Dr. Cunningham and Dr. Woodward, the hospital executives expressed confidence about the long term financial and programmatic viability of the proposed transfer of ownership. They said they were committed to preserving mental and behavioral health services and other service lines with comparatively weak revenue potential. Dr. Rosenthal asked for a response to Mr. Fishbein's concerns, and Mr. Holder replied that the hospital had good experience with risk sharing contracts involving Medicare patients and that the hospital had no plans for workforce reductions but could not commit absolutely to not making layoffs. He also said the hospital was committed to staff training but objected to what he described as excessive overhead for SEIU's training program. In response to a question from Mr. Rivera, Mr. Holden described community engagement in more detail. Dr. Woodward asked about positions of the Attorney General and Health Policy Council (HPC) and received assurance from Mr. Page that HPC had accepted the Department's recommendation. Mr. Tabb and Michele Garvin, general counsel to Jordan Hospital, stated there were no outstanding legal issues involving the office of the Attorney General.

Dr. Woodward moved to approve Project Number 5-3C26 for Transfer of Ownership of Jordan Hospital, Inc., of Plymouth to Beth Israel Deaconess Medical Center, Inc., of Boston. The motion was seconded by Dr. Rosenthal. Mr. Rivera abstained from the vote. The DoN was approved with ten members voting in the affirmative. There was one abstention by Mr. Rivera and no recusal.

ITEM 3: FINAL REGULATION: Proposed Amendments to 105 CMR 223.000: *Pediatric Immunization Program Assessment*, Pursuant to Chapter 139 of the Acts of 2012

Kevin Cranston, Director of Bureau of Infectious Disease, presented the proposed amendments to 105 CMR 223.000: *Pediatric Immunization Program Assessment*, Pursuant to Chapter 139 of the Acts of 2012, which would update the Department's authority to assess fees from insurers to pay for pediatric vaccines in light of the elimination of the former Department of Health Care Finance and Policy.

Following the presentation, Commissioner Bartlett opened the floor for discussion. Dr. Woodward asked for clarification that the proposed revision was intended to cover purchasing of all pediatric vaccines under the CDC program that extends discounts to state purchasers. Mr. Cranston confirmed and provided additional information about the CDC program, which provides discounts averaging 40 percent and distributes vaccines to providers through a third party vendor.

Dr. David moved to approve proposed amendments to 105 CMR 223.000: *Pediatric Immunization Program Assessment*, Pursuant to Chapter 139 of the Acts of 2012. The motion was seconded by Dr. Woodward and approved unanimously. Voting in the affirmative were eleven members.

ITEM 4: FINAL REGULATION: Proposed Amendments to 105 CMR 200.000: *Physical Examination of School Children* (with respect to BMI Reporting), Pursuant to M.G.L. c. 111, §§ 3 and 5; and M.G.L. c. 71, § 57

Carlene Pavlos, Director, Bureau of Community Health and Prevention, with Lea Susan Ojamaa, Director, Division of Prevention and Wellness, presented on the Proposed Amendments to 105 CMR 200.000: *Physical Examination of School Children* (with respect to BMI Reporting), Pursuant to M.G.L. c. 111, §§ 3 and 5; and M.G.L. c. 71, § 57. Ms. Pavlos summarized impacts of the proposed regulation, including removal of the requirement for schools to provide parental notification of BMI screening results, retention of authority to conduct screenings, retention of parental rights to request BMI screening results, and strengthened confidentiality provisions. She noted that most public comment supported the proposed revisions.

Commissioner Bartlett opened the floor for discussion. Mr. Rivera expressed support for the proposal and called for focusing on data collection. Dr. Woodward commended a reported reversal in childhood obesity trends in Massachusetts and asked how we can disseminate information about effective practices. Commissioner Bartlett noted success of the Mass in Motion program and the Department's work on policy and environmental change. In response to a question from Dr. Woodward, Commissioner Bartlett said the Department's evaluation design was extremely detailed and said Massachusetts was leading the nation in this regard. Dr. Woodward suggested sending a letter to legislature to oppose a pending bill that would prohibit BMI data collection. He also asked about notification to parents concerning collection of BMI information. Ms. Pavlos said that schools notify parents that BMI data is being collected and that parents may request information about their children. Dr. David and Mr. Lanzikos expressed support for the proposed changes, and Mr. Lanzikos asked for a reference in the regulations concerning notifying parents that they may request the information. Attorney Peggy Wiesenber from the DPH Office of General Counsel provided the reference and explained that parents have rights to request any information in student health record under state regulations. Mr. Lanzikos recommended sub-regulatory guidance to encourage schools to notify parents about their rights to request results.

Mr. Rivera moved to approve Proposed Amendments to 105 CMR 200.000: *Physical Examination of School Children* (with respect to BMI Reporting), Pursuant to M.G.L. c. 111, §§ 3 and 5; and M.G.L. c. 71, § 57. The motion was seconded by Dr. David. The motion passed on a vote of 10 in favor and one (Mr. Cox) opposed. There were no abstentions and no recusals.

Dr. Cunningham excused himself from the meeting at 10:24 a.m.

ITEM 5: Informational Briefing on Proposed Amendments to 105 CMR 130.000: *Hospital Licensure*, 105 CMR 140.000: *Licensure of Clinics* and 150.000: *Licensing of Long-Term Care Facilities*, Regarding Provision of Information on Palliative Care and End-of-Life Options, pursuant to Section 103 of Chapter 224 of the Acts of 2012.

Madeleine Biondolillo, MD, Director, Bureau of Health Care Safety and Quality, presented an Informational Briefing on Proposed Amendments to 105 CMR 130.000: *Hospital Licensure*, 105

CMR 140.000: *Licensure of Clinics* and 150.000: *Licensing of Long-Term Care Facilities*, Regarding Provision of Information on Palliative Care and End-of-Life Options, pursuant to Section 103 of Chapter 224 of the Acts of 2012. She was joined by Kara Murray, Special Assistant for Policy and Planning in the Bureau of Health Care Safety and Quality

Commissioner Bartlett noted that because of the way the statute was written, the commissioner has authority to promulgate this regulation. It will go to public comment but not back to the Public Health Council for final approval. In discussion following the informational briefing, Mr. Rivera recommended that leaders in the faith community, as well as health care providers, receive information about palliative care and end-of-life options. Dr. David asked whether use of Medical Orders for Life Sustaining Treatment (MOLST) forms will be required or recommended and raised a practical concern about the need for current forms to be printed on pink paper. Dr. Biondolillo replied that the Department will issue guidance about this and other best practices. Mr. Lanzikos asked whether hospital chaplains may be included in the definition of practitioners and asked whether there is statutory authority to require or encourage other provider types, such as elder services, home care, assisted living, and developmental services to use these guidelines. Mr. Rivera suggested adding Community Health Workers to that list. Mr. Lanzikos recommended close cooperation with the Executive Office of Elder Affairs and with caregivers who are not defined medical providers, especially in working with people suffering dementia. Dr. Biondolillo replied that the Department will reach out to others but does not have statutory authority to add provider groups. Dr. Woodward emphasized that in addition to people not getting care they want, people are getting care they do not want, and that care is futile and expensive, driving costs up in system. He encouraged the Department to leverage this regulation to engage a broader audience in fully implementing MOLST, and recommended that his colleagues on the Public Health Council should read the state MOLST report. Mr. Brindisi recommended that DPH develop and disseminate a model policy. Mr. Leary recommended interaction with the state soldier homes and the Department of Veterans Affairs, noting a large cohort of veterans is aging. Dr. David concurred with Dr. Woodward on the import of broad outreach but noted that more public education is needed on hospice and MOLST. She said doctors rarely have time to have these discussions in clinic, and patients have a lot of misconceptions. Mr. Lanzikos concurred and said new language is needed to stress personal control over care options and our own experience. Commissioner Bartlett told PHC members that as a former hospice nurse, these issues are very important to her.

Following the discussion of palliative care and end-of-life options, Dr. Woodward asked for a report on health care workforce flu vaccination. Commissioner Bartlett replied that a report was under preparation for the November PHC meeting.

The meeting adjourned at 11:01 AM on a motion by Mr. Rivera, seconded by Dr. Woodward, and passed unanimously without discussion.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. Public Health Council Meeting Minutes from September 11, 2013

3. Determination of Need Pending Projects List
4. Staff Summary for Determination of Need by the Public Health Council – Project Number 5-3C26 for transfer of ownership of Jordan Hospital, Inc. of Plymouth to Beth Israel Deconess Medical Center, Inc. of Boston.
5. Memo of Final Promulgation of Proposed Regulations at 105 CMR 223.000 (Pediatric Immunization Program Assessment)
6. Memo of Request for Approval for Final Promulgation Revisions to 105 CMR 2000.00: Physical Examination of School Children
7. Memo of Informational Briefing on Proposed Amendments to 105 CMR 130.000: Hospital Licensure, 105 CMR 140.000: Licensure of Clinics and 150.000: Licensing of Long-Term Care Facilities Regarding Provision of Information on Palliative Care and End-of-Life Options.
8. Copies of all power point presentations (emailed upon conclusion of the meeting)

Commissioner Cheryl Bartlett, RN, Chair