

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of September 16, 2015

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH COUNCIL

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Henry I. Bowditch Public Health Council Room, 2nd Floor

250 Washington Street, Boston MA

Docket: Wednesday, September 16, 2015 9:00 AM

1. ROUTINE ITEMS:

- a. Introductions
- b. Updates from Commissioner Monica Bharel, MD
- c. Record of the Public Health Council Meeting August 12, 2015 **(Vote)**

2. DETERMINATION OF NEED (DoN)

- a. Reliant Rehabilitation Hospital New England, LLC has filed a DoN for Transfer of Ownership in Woburn, MA. No. 4-3C44 **(Vote)**

- b. Reliant Rehabilitation Hospital Braintree, LLC has filed a DoN for Transfer of Ownership No. 4-3C43 **(Vote)**

3. PRELIMINARY REGULATION

- a. Informational Briefing on Proposed Rescission of 105 CMR 230.000: *Healthy Start Program*.

- b. Informational Briefing on Proposed Rescission of 105 CMR 680.000: *Phosphates in Household Cleansing Products*

The Commissioner and the Public Health Council are defined by law as constituting the Department of Public Health. The Council has one regular meeting per month. These meetings are open to public attendance except when the Council meets in Executive Session. The Council's meetings are not hearings, nor do members of the public have a right to speak or address the Council. The docket will indicate whether or not floor discussions are anticipated. For purposes of fairness since the regular meeting is not a hearing and is not advertised as such, presentations from the floor may require delaying a decision until a subsequent meeting.

Public Health Council

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

Date of Meeting: Wednesday, September 16, 2015

Beginning Time: 9:18 AM

Ending Time: 10:14 AM

Attendance and Summary of Votes:

Board Member	Attended	Item 1c Minutes of the August 12, 2015 Meeting	Item 2a Determination of Need No. 4-3C44, Reliant Rehabilitation Hospital New England, LLC	Item 2b Determination of Need No. 4-3C43 Reliant Rehabilitation Hospital Braintree, LLC
Monica Bharel	Yes	Yes	Yes	Yes
Edward Bernstein	Yes	Yes	Yes	Yes
Derek Brindisi	Absent	Absent	Absent	Absent
Harold Cox	Absent	Absent	Absent	Absent
John Cunningham	Yes	Yes	Yes	Yes
Michele David	Yes	Abstained	Yes	Yes
Meg Doherty	Absent	Absent	Absent	Absent
Michael Kneeland	Yes	Yes	Yes	Yes
Paul Lanzikos	Yes	Yes	Yes	Yes
Denis Leary	Yes; Arrived at 9:44	Not present at time of vote	Yes	Yes
Lucilia Prates-Ramos	Absent	Absent	Absent	Absent
Jose Rafael Rivera	Yes	Abstained	Yes	Yes
Meredith Rosenthal	Yes	Yes	Yes	Yes
Alan Woodward	Yes	Yes	Yes	Yes
Michael Wong	Absent	Absent	Absent	Absent
Summary	10	7 Approved, 2 Abstentions	10 Approved	10 Approved

PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. c. 17, §§ 1, 3) was held on Wednesday September 16, 2015 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: Department of Public Health Commissioner Monica Bharel (chair); Edward Bernstein, MD; John Cunningham PhD; Michele David, MD; Michael Kneeland, MD; Paul Lanzikos; Denis Leary; Jose Rafael Rivera; Meredith Rosenthal, PhD; Alan Woodward, MD.

Absent member(s) were: Derek Brindisi; Harold Cox; Meg Doherty; Lucilia Prates-Ramos; Michael Wong, MD.

Also in attendance were Margret Cooke, General Counsel at the Massachusetts Department of Public Health and Jennifer Barrelle, Interim Deputy Chief of Staff for Policy and Regulatory Affairs at the Massachusetts Department of Public Health.

Commissioner Bharel called the meeting to order at 9:18 AM and made opening remarks before reviewing the agenda. The Commissioner's remarks included the following items:

ROUTINE ITEMS

Updates from Commissioner Monica Bharel, M.D., MPH

Commissioner Bharel introduced the Department's new Chief of Staff, Natalie Nguyen to Council members, and noted that the former Chief of Staff, Eileen Sullivan, is now the Department's Chief Operating Officer.

The Commissioner discussed the Governor's Action Plan to Address the Opioid Epidemic in the Commonwealth, specifically its recommendation to review medical education curriculum. She mentioned the Governor recently convened a meeting of state officials and deans of medical schools in Massachusetts to collaborate in the development of principles, to include prevention initiatives, to use when educating students on pain management and safe prescribing.

Commissioner Bharel mentioned that the Worcester Recovery High School opened on September 8, 2015, making it the fifth recovery high school in the state, and noted that these schools served 196 students during the 2014 to 2015 school year.

Commissioner Bharel discussed the naloxone bulk purchasing program for municipalities, recently established in the fiscal year 2016 state budget, and noted that Department staff will begin outreach in the coming weeks. Additionally, the Commissioner mentioned that \$325,000, part of Attorney General Healey's recent agreement with Amphastar Pharmaceuticals, Inc., will be placed into the bulk purchasing trust fund to help offset costs to municipalities and first responders.

The Commissioner mentioned establishment of the Drug Formulary Commission as part of the Governor's recommendation, and included that the purpose of the group is to identify drugs that have a

heightened level of public health risk, identify possible therapeutically equivalent substitutes, and create a crosswalk of these medications.

As part of the updates around initiatives to combat opioid misuse, the Commissioner told Council members that data on the Prescription Monitoring Program requested at the August Public Health Council Meeting is forthcoming and relayed that a vendor to build the new Prescription Monitoring Program system will be selected soon.

Lastly, the Commissioner gave updates on several Department events and initiatives, including: the Office of Preparedness and Emergency Management's recently launched 2015 Know, plan, Prepare Campaign as part of National Preparedness Month; recognition of educational materials created by DPH's Tuberculosis Program, within Bureau of Infectious Disease, by the Centers for Disease Control in its July newsletter; the Universal Newborn Hearing Screening Program's August 5, 2015 family event at the Worcester Bravehearts baseball game, which included the Governor and Lieutenant Governor as attendees; the Office of Health Equity's recent Office of Minority Health State Partnership Initiative grant to implement an Oral Health Equity Project; and congratulations to David Gourdreau, a field supervisor in the Bureau of Infectious Disease's Sexually Transmitted Diseases Division, for being recognized by the National Guard with the "Patriot's Award" for workplace supervisors, which is given to those who support National Guard members in employment.

Mr. Lanzikos asked about PMP procurement and its response. Commissioner Bharel said the details are still confidential under procurement rules, but noted it was widely publicized.

Dr. David congratulated the Commissioner and Department on all of the great work they have been doing.

Record of the Public Health Council Meeting August 12, 2015 (Vote) –

Commissioner Bharel asked if any members had any changes to be included in the August 12, 2015 meeting minutes.

Dr. Kneeland noted that Dr. Dickson of the University of Massachusetts is incorrectly spelled and should be spelled "Dickson".

Commissioner Bharel requested, with that change, a motion to accept.

Dr. Woodward made a motion to approve, and Dr. Bernstein seconded the motion. All approved, except for Dr. David and Mr. Rivera who abstained as they were absent from the August meeting.

DETERMINATION OF NEED (DoN)

a. Reliant Rehabilitation Hospital New England, LLC has filed a DoN for Transfer of Ownership in Woburn, MA. No. 4-3C44 (Vote)

Commissioner Bharel invited Eric Sheehan, Interim Director for the Bureau of Health Care Safety and Quality, to present on the Determination of Need application filed by Reliant Rehabilitation Hospital of New England for a transfer of ownership.

Upon conclusion of the presentation, Commissioner Bharel asked if the Council members had any questions for Mr. Sheehan.

Dr. Woodward mentioned that the staff summary notes HealthSouth, the acquirer, has two rehabilitation hospitals in Massachusetts. He further noted that the staff summary states HealthSouth has 89 outpatient rehabilitation locations, and asked if any of those sites are in Massachusetts. Dr. Woodward also asked if there were any inspectional issues at the two Massachusetts rehabilitation hospital locations.

Mr. Sheehan indicated the applicant would be best able to address whether or not there are any outpatient rehabilitation locations in Massachusetts. Additionally, Mr. Sheehan noted that he would have to check with the Division of Health Care Facility Licensure and Certification regarding inspectional issues, but that he was not aware of any issues prior to this meeting.

Commissioner Bharel asked Council members if they had any additional questions for Mr. Sheehan. Seeing none, the Commissioner invited representatives of Reliant Rehabilitation Hospital of New England forward to present to the Council and answer any questions members may have. HealthSouth's Regional President for Northeast Operations, Peter Mantegazza, joined the table to present and answer questions.

Mr. Mantegazza indicated that both rehabilitation hospitals in Massachusetts, Fairlawn Rehabilitation Hospital and HealthSouth Rehabilitation Hospital of Western Massachusetts in Ludlow, have outpatient departments within the hospital, but do not have any satellites.

Dr. Woodward asked if Mr. Mantegazza was aware of any patient complaints or other issues in these facilities that have been brought to the Department of Public Health's attention.

Mr. Mantegazza indicated that he was not aware of any issues with the Department at either hospital.

Mr. Lanzikos asked if the Division of Health Care Facility Licensure and Certification gets notified that a licensed facility is under review for transfer of ownership, so they can alert Determination of Need staff if there are any operating issues.

Mr. Sheehan noted that for such transfers of ownership there is a joint hearing that includes Determination of Need and Division of Health Care Facility Licensure and Certification staff.

At 9:45, Commissioner noted for the record that Denis Leary arrived at 9:44.

Seeing no further questions, Commissioner Bharel asked for a motion to accept the staff recommendation for approval of the Determination of Need for Reliant Rehabilitation Hospital of New England. Mr. Rivera made a motion to approve, and Mr. Lanzikos seconded the motion. All approved.

b. Reliant Rehabilitation Hospital Braintree, LLC has filed a DoN for Transfer of Ownership No. 4-3C43 (Vote)

Commissioner Bharel asked Eric Sheehan, Interim Director for the Bureau of Health Care Safety and Quality, to return to the table for a presentation on the Determination of Need application filed by Reliant Rehabilitation Hospital of Braintree for a transfer of ownership.

Eric Sheehan presented. At conclusion of presentation, Commissioner asked if any questions for Eric.

Dr. Bernstein noted he was concerned by the neighborhood concern around provision of substance abuse treatment in the community, as there can be co-occurring addiction issues that go hand in hand with rehabilitation treatment sometimes and that health equity is beyond what an individual community feels is appropriate.

Mr. Lanzikos commended HealthSouth for their willingness to engage in dialogue with the neighborhood, and noted he agrees with Dr. Bernstein's comments. He discussed that any restriction on changing mission may not be able to respond to changing needs of populations. He referenced the Commissioner's opening remarks highlighted the need for substance abuse treatment, and stated he would be opposing a hypothetical condition to limit this moving forward and hopes access to needed substance abuse care would not be constrained.

Eric thanked council for comments, indicated that any changes to services offered by the Hospital would move through the process at the Bureau of Health Care Safety and Quality, but also noted that such a change is not part of the application today.

Dr. Bernstein noted he would like assurances from the applicant that they will not discriminate against patients with addiction issues when providing rehabilitation services.

Mr. Mantegazza noted that HealthSouth does physical rehabilitation, which includes many things. He gave an example that pain management may be a component of that treatment and noted that HealthSouth prescribes cautiously. He noted that substance abuse issues may not be the sole reason a patient is admitted to the hospital, but it is often a contributing factor that HealthSouth does not discriminate against.

Dr. Bernstein noted that substance abuse is a chronic disease and should be treated that way, and applauded Mr. Mantegazza's comments in that area.

Mr. Mantegazza clarified that the resident advisory council HealthSouth hopes to put in place in Braintree would also be in place in Woburn.

Paul Marshall testified on behalf of the neighborhood group that testified at the public hearing on the transfer of ownership. Mr. Marshall noted that neighbors have been dealing with the same issues with the Hospital since the 1980s, and asks that the hospital continue operating as a good neighbor. Mr. Marshall touched upon some areas of concerns, such as trees, fences, and dumpsters, and noted that this is a densely packed residential area. He stated that when first established, the neighborhood group was told that the rehabilitation hospital wouldn't affect the area, but that there have been issues over the years and it has always been adversarial. He concluded by saying that the neighborhood concern is with an outpatient methadone clinic, given the densely packed residential area, and asked the Department to please understand the concerns around treatment of drug addiction.

Seeing no further questions, Commissioner Bharel asked for a motion to accept the staff recommendation for approval of the Determination of Need for Reliant Rehabilitation Hospital of Braintree. Mr. Lanzikos made a motion to approve, Dr. Rosenthal seconded the motion. All approved.

Informational Briefing on Proposed Rescission of 105 CMR 230.000: *Healthy Start Program*

Commissioner Bharel invited Ron Benham, Director for the Bureau of Family Health and Nutrition, to present an informational briefing on the proposed rescission of regulation 105 CMR 230.000 - Healthy Start Program, as the authorizing statute for this regulation has been repealed.

Upon conclusion of the presentation, the Commissioner asked if Council members had any questions for Mr. Benham.

Dr. Bernstein asked if we could compare the Department of Public Health regulation to the MassHealth regulation to see if there is anything missing across the two.

Mr. Benham indicated that he will follow up with that comparison, and noted that in 2014 MassHealth transitioned women previously enrolled in the Healthy Start Program into MassHealth Standard, which ensures all of the same benefits, and because of this the Healthy Start Program no longer exists.

Seeing no other questions or comments, the Commissioner thanked Mr. Benham for his presentation.

Informational Briefing on Proposed Rescission of 105 CMR 680.000: *Phosphates in Household Cleansing Products*

Commissioner Bharel invited John Halter, Chief of Regulatory Implementation for the Bureau of Environmental Health, to present an informational briefing on the proposed rescission of regulation 105 CMR 680.000 - Phosphates in Household Cleansing Products, as the regulation duplicates statutory requirements and industry has shifted away from using phosphates in household cleansing products. Mr. Halter was joined by Michael Celona, Chief of Water Toxics for the Bureau of Environmental Health.

Upon conclusion of the presentation, the Commissioner asked if Council members had any questions for Mr. Halter.

Dr. Woodward asked to confirm that while the regulations were promulgated after the statute passed, they are not more comprehensive than the statute.

Mr. Halter confirmed that is correct.

Dr. Woodward also asked if the statute should also be repealed, given changes in industry practices.

Mr. Halter indicated that the statute should not be repealed, because it still serves a purpose due to the fact that the current industry ban is voluntary and if the industry should ever decide to lift that ban the statutory restrictions would still be in place.

Seeing no other questions or comments, Commissioner Bharel thanked Mr. Halter for his presentation.

Dr. Cunningham asked to add new business to the agenda, and proposed a motion to vote to rescind 230.000 - Healthy Start Program, given that the statute is repealed.

Commissioner Bharel noted that it is part of the process for all regulations to come before the Council.

Alison Mehlman, Deputy General Counsel for the Department, explained that we are required by Chapter 30A of the Massachusetts General Laws to complete a public comment process for any rescission.

Dr. Cunningham withdrew the motion.

Mr. Lanzikos requested a staff organizational chart. Commissioner Bharel confirmed that the Department will provide one.

The Commissioner noted that the next meeting will be held on October 21, 2015 from 9-1, and noted that there will be extra meetings and extended meeting times throughout the regulation review process.

Commissioner Bharel noted that staff was passing out a copy of the Governor's Opioid Working Group Action Plan referenced at the beginning of the meeting.

Dr. Bernstein had a question about the Action Plan around the October 2015 implementation of provisions of state law requiring prior authorization for 14 days of substance abuse treatment.

The Commissioner noted that this was not included in the action plan since the law was already passed and set to begin October. Instead, the Action Plan includes items not currently being implemented. The Commissioner welcomed feedback from Council members moving forward on the on-the-ground implementation of this provision.

Commissioner Bharel requested a motion to adjourn. Dr. Bernstein made a motion to adjourn, Dr. David seconded the motion. All approved.

Meeting adjourned at 10:14AM

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. Minutes of the Public Health Council meeting of August 12, 2015.
3. DoN Pending Projects
4. DoN Staff Summary for DoN Project No. 4-3C44
5. DoN Staff Summary for DoN Project No. 4-3C43
6. Copy of the PowerPoint presentation for the Informational Briefing on Proposed Rescission of 105 CMR 230.000: *Healthy Start Program*
7. Copy of the PowerPoint presentation for the Informational Briefing on Proposed Rescission of 105 CMR 680.000: *Phosphates in Household Cleansing Products*

Commissioner Monica Bharel, Chair