**DRAFT** MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of December 13, 2023

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**PUBLIC HEALTH COUNCIL MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH**

**Henry I. Bowditch Public Health Council Room, 2nd Floor 250 Washington Street, Boston MA**

**Docket: \*\*\*REMOTE MEETING\*\*\* Wednesday, December 13, 2023 – 9:00AM**

***Note: The December Public Health Council meeting will be held remotely as a video conference consistent with St. 2021, c. 20, s. 20, which provides for certain modifications to the Massachusetts Open Meeting Law.***

Members of the public may listen to the meeting proceedings by using the information below:

Join by Web:

<https://us06web.zoom.us/j/81123739511?pwd=_GL6qTT_3OsqrXJWMNVh0elT4IQTrg.Z63I_vhBPpvz8RDd>

Dial in Telephone Number: 929-436-2866 Webinar ID: 811 2373 9511

Passcode: 892015

1. **ROUTINE ITEMS**
   1. Introductions.
   2. Updates from Commissioner Robert Goldstein.
      * Review Data from the Biannual Opioid Report.
   3. Record of the Public Health Council Meeting held November 8, 2023 **(Vote)**.
2. **DETERMINATION OF NEED**
   1. Request by Berkshire Health Systems, Inc. for an Original License **(Vote).**
3. **REGULATIONS**
   1. Request to promulgate rescission of 105 CMR 159.000, *COVID-19 Vaccinations for certain staff providing home care services in Massachusetts* **(Vote).**

*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.*

Attendance and Summary of Votes:

Presented below is a summary of the meeting, including timekeeping, attendance and votes cast.

Date of Meeting: December 13, 2023 - Start Time: 9:03 am. Ending Time: 11:03 am.

| **Board Member** | **Attended** | **First Order:**  **Approval of November 8, 2023 Minutes (Vote)** | **Second Order:**  **Request by Berkshire Health Systems, Inc. for an Original License**  **(Vote)** | **Third Order:**  **Request to promulgate recission of 105 CMR 159.000**  **(Vote)** |
| --- | --- | --- | --- | --- |
| **Commissioner Robert Goldstein** | Yes | Yes | Yes | Yes |
| **Edward Bernstein** | Yes | Yes | Yes | Yes |
| **Lissette Blondet** | Yes | Yes | Yes | Yes |
| **Kathleen Carey** | Yes | Abstain | Yes | Yes |
| **Elizabeth Chen** | No | Absent | Absent | Absent |
| **Harold Cox** | Yes | Yes | Yes | Absent |
| **Alba Cruz-Davis** | Yes | Yes | Yes | Yes |
| **Michele David** | No | Absent | Absent | Absent |
| **Robert Engell** | Yes | Yes | Yes | No |
| **Elizabeth Evans** | Yes | Yes | Yes | Yes |
| **Eduardo Haddad** | Yes | Yes | Yes | Yes |
| **Joanna Lambert** | Yes | Abstain | Yes | Yes |
| **Stewart Landers** | Yes | Yes | Yes | No |
| **Mary Moscato** | Yes | Yes | Yes | Yes |
| **Gregory Volturo** | Yes | Yes | Yes | Yes |
| **Summary** | 13 Members Present;  2 Members Absent | 11 Members Approved;  2 Members Absent  2 Members Abstained | 13 Members Approved  2 Members Absent | 10 Members Approved  2 Members Disapproved  3 Members Absent |

**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, December 13, 2023, by the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts 02108.

Members present were: Commissioner Robert Goldstein; Edward Bernstein, MD; Lissette Blondet; Kathleen Carey; Dean Harold Cox; Alba Cruz-Davis; Robert Engell; Elizabeth Evans; Eduardo Haddad, MD; Joanna Lambert; Stewart Landers; Mary Moscato; Gregory Volturo, MD.

Also in attendance was Beth McLaughlin, General Counsel at the Massachusetts Department of Public Health.

Commissioner Goldstein called the meeting to order at 9:03 am and made opening remarks before reviewing the docket.

Dr. Haddad arrived at 9:08 am and Dean Cox left the meeting at 10:46 am.

**1. ROUTINE ITEMS**

*b. Updates from Commissioner Robert Goldstein*

Commissioner Goldstein proceeded to update the council on the following:

**Essential Services and Maternal Health Access**

Commissioner Goldstein noted that the Healey-Driscoll Administration released two reports that evaluated access to high-quality health care in Massachusetts, including prenatal and postpartum care, primary care, and behavioral health services, particularly in rural and underserved communities.

**Medication Abortion Toolkit**

Commissioner Goldstein said that last month, the Healey-Driscoll Administration announced the launch of the Medication Abortion Toolkit for Public Colleges and Universities, developed by the Department in partnership with the Reproductive Equity Now Foundation. The tool kit is designed to assist Massachusetts’ public colleges and universities in preparing medication abortion readiness plans to provide, or make referrals for, medication abortion on college campuses, in accordance with new Massachusetts law.

The toolkit includes not only initial planning steps for university administrators but a guide to establishing referral relationships (administrative and clinical), and support tools for clinicians and health center teams. Also, information regarding insurance, confidentiality, and security.

This toolkit represents the Department’s commitment to reproductive health and individual choice, and the Department will continue to work hard to protect these rights and safeguard health for young people across the state.

**Cannabis Industry Occupational Health**

Commissioner Goldstein noted that last month, the Department released an investigative report outlining steps the cannabis industry should take to prevent work-related asthma. A bulletin was sent to health care providers in the Commonwealth, to urge them to identify work-related asthma in that industry. These steps were taken after an investigation conducted by DPH and the Occupational Safety and Health Administration (OSHA) confirmed the first known occupational asthma fatality in the US cannabis workforce, last year in Massachusetts. The worker’s death occurred from a fatal asthma attack while working as a flower technician, processing, and handling whole and ground cannabis flower buds, at an indoor cannabis cultivation facility seven months after she started employment. Other cases of non-fatal respiratory disease among Massachusetts workers in that industry have been reported. Massachusetts has more than 500 licensed cannabis industry employers that provide 22.000 jobs. DPH will continue to identify and follow up on these cases using our long-standing public health surveillance system for work-related respiratory diseases.

**Update on Emergency Assistance**

Commissioner Goldstein said the Department continues to support the public health needs of families in the Emergency Assistance shelter system. In November, the Healey administration, in partnership with the White House and the US Department of Homeland Security, launched a work authorization clinic to expedite the documentation needed for work permits. DPH, with the support of MEMA and the Massachusetts National Guard, was able to provide seasonal flu and COVID-19 vaccines as part of the clinics. Over 1,000 vaccines were administered to 830 adults and children over 6 months old.

**Respiratory Illness Season**

Commissioner Goldstein mentioned we are entering a critical time in respiratory illness season. Hospitals are already seeing capacity constraints. Pediatric hospitalizations for respiratory illnesses have been increasing, primarily driven by RSV. While uptake of the flu vaccine has been high, uptake of the current COVID vaccine is falling short of public health recommendations, particularly for some of the populations most likely to be hospitalized.

The Commissioner suggested to get vaccinated as soon as possible against COVIS-19, flu, and for those who are eligible, RSV. Due to a limited supply of RSV vaccine for newborns, it is particularly important for people who are 32 to 36 weeks pregnant to get an RSV vaccine this season to offer critical protection for a baby born during respiratory virus season. He suggested also washing your hands often, wearing a mask, getting tested for COVID if you have flu symptoms while speaking to your health care provider, and staying home when you have symptoms of respiratory illness.

The Commissioner asked if there were any questions at this point before moving on to the next topic.

**Opioid Report**

Commissioner Goldstein presented an interim data report to be released later in the day, regarding opioid-related overdoses in the state. It contains the opioid-related overdose death report, which includes data on opioid-related overdose deaths, opioid-related EMS incidents, substance exposed newborns and maternal opioid use, as well as opioid prescribing as part of DPH’s ongoing surveillance of, and response to, the opioid epidemic.

Commissioner Goldstein said the Healey-Driscoll Administration is committed to a strategy that would address substance use disorder, provide resources to communities to reverse the trend in overdose deaths, and support evidence-based harm reduction strategies. DPH examined the feasibility of establishing overdose prevention centers in Massachusetts and released the findings in an Overdose Prevention Center (OPC) Feasibility Report.

Commissioner Goldstein asked if there were any questions.

Ms. Blondet asked who would run the OPCs and how they would be funded.

Commissioner Goldstein explained that OPCs are a tool for communities that feel they have a need for an OPC. He said where OPCs have been successful globally, are in areas where harm reduction services have been in place prior. The best strategy is to look at those partners that already have harm reduction programs in place, and work with them while the municipality and community take the lead.

Mr. Landers mentioned the rates of overdose in rural areas and suggested reviewing how syringe services programs (SSPs) are functioning in rural areas and if harm-reduction efforts are reaching them. He asked for clarification between rural and most rural.

Commissioner Goldstein said that there are two levels of “rural” designation used by the Department; rural level 1 and rural level 2, based on how close the rural community is to central services. The data presented today is a first-time review and needs more clarity to determine if rural areas where the rates of overdose are increasing have harm-reduction services in place.

Deirdre Calvert, Director of the Bureau of Substance Addiction Services, replied to Mr. Landers saying that there is always concern of the delivery timeline to certain locations, using methadone as an example. She said they are preparing data for review as to where the Opioid Treatment Program (OTP) deserts are. They are adding mobile sites. She said availability and time to get to services is problematic.

Dr. Volturo said several years ago, the Mass Medical Society tried to move the idea of OPC sites forward but found fear of having an OPC in their community. He asked if communities are now willing to adopt this new concept, and how to socialize the concept so communities are willing to accept it.

Commissioner Goldsteine said that regarding the legislature, the report makes it clear that to make OPCs feasible, there needs to be action in the State House to provide state level liability protection for providers, consumers, and others that would be associated with these facilities. There is a bill currently in the legislature with such a proposal. He said that within the Department, OPCs are described as a public use diversion program. Drug use is happening currently in communities. What OPCs might do is, is bring that use into a safer setting and get the use off the streets, creating less “drug litter,” less crime, fewer calls for first responders, and less interaction with law enforcement, creating a benefit to the community. This is the message that needs to get out.

Mr. Landers commented on the data change by race and ethnicity over time, where White individuals used to have much higher rates of non-fatal overdoses but has changed to Black and Latinx individuals as the majority. He asked what would cause this.

Commissioner Goldstein said the data concerning non-fatal overdoses is very hard to capture. The number reflects only those involved through the medical system.

Dana Bernson, Director of Special Analytic Projects, added the data is still rough. The first thing you have to do is look at the data to see what it is showing us and then look at what may be causing this data. She agreed with the Commissioner that we are still a few years away from understanding these trends, some of which is health seeking behavior, and some which may be where naloxone is or is not available. She believed that the data reflecting a decrease in non-fatal overdoses is not necessarily a decrease in overdoses, but a decrease in the number of people the data is capturing that are not being reported.

Mr. Landers asked if the data has cross-referenced ethnicity with rurality.

Ms. Bernson said they hope to cross reference non-fatal overdose by ethnicity and geography soon.

Ms. Blondet said during the AIDS pandemic, those people who were injecting drugs collectively, didn’t have a safe environment offered by the state but instead used apartments as unsafe “shooting galleries.” She encouraged outreach in locations where the activity occurs with the hope to encourage trust for users to come to future OPCs, instead of as in the past, “waiting for them to come to us.”

Commissioner Goldstein agreed, saying that success is seen in overdose protection centers where there is collaboration with the community. He said another advantage of the OPC is that they do drug testing and communicate back to the community about what the level of safety is in the drug supply.

Dr. Haddad was pleased to note that the prescription drug statistics remained flat and were not rising.

Commissioner Goldstein said the Departments biggest concern is the contamination of the drug supply with fentanyl.

Dr. Bernstein suggested that if the majority of overdose deaths are from people who are at home alone, how does that affect our strategies.

Commissioner Goldstein said that it is necessary for us to make sure that we get out there to make sure that people are aware of our services. The overdose hotline that started in September is a great way for those that may not be connected to an SSP, or not connected to some type of treatment provider in their community, to still be able to not use alone and be connected to our service. It is our responsibility to get those resources out to those that historically have not been able to engage in our care.

Dr. Bernstein thought it would be valuable from a public health perspective to look at other states that have not implemented some of the programs that we have from 2013 to the present to see what has worked or not. He said this gives us a better perspective that we haven’t failed by the things we have put in place.

Commissioner Goldstein said we can and will make a comparison to other states and added that Massachusetts has invested 1.2 billion dollars in harm reduction through services and substance use disorder treatment and yet, we have still seen increases in opioid related deaths. With that investment, we are leading the country in many ways. He mentioned multiple resources that Massachusetts offers.

Dean Cox said that the Public Health Council is an underused resource. It has people with expertise who are interested in asking questions. He would encourage the Commissioner, as he moves forward to utilize the council and come back with specific points for the council to advise or advocate for. Commissioner Goldstein agreed.

With no further questions, Commissioner Goldstein turned to the docket.

**1****. ROUTINE ITEMS**

*c. November 8, 2023 Minutes* ***(Vote)***

Commissioner Goldstein asked if there were any changes to the November 8, 2023, minutes.

Mr. Landers requested a clarification regarding GLAD - GLBTQ Legal Advocates and Defenders. The minutes were amended as requested.

Commissioner Goldstein asked if there was a motion to approve the amended November 8, 2023, minutes.

Dr. Bernstein made the motion, which was seconded by Dr. Volturo. Ms. Lambert and Ms. Carey abstained. All other present members voted to approve the minutes as amended.

**2. DETERMINATION OF NEED**

1. *Request by Berkshire Health Systems, Inc. for an Original License* ***(Vote)****:*

Commissioner Goldstein invited Dennis Renaud, Director of the Determination of Need Program, to review the staff recommendation for Berkshire Health System, Inc.’s request for an Original License. He was joined by Elizabeth Kelley, Director of the Bureau of Health Care Safety and Quality and Rebecca Kaye, Deputy General Counsel.

Upon the conclusion of the presentation by Mr. Renaud, Commissioner Goldstein invited Elizabeth Quigley, Chief of Staff to US Congressman Richard Neal, to provide remarks regarding the application on behalf of the Congressman.

Commissioner Goldstein then invited Representative John Barrett to provide remarks regarding the application.

Upon the conclusion of these remarks, Commissioner Goldstein asked the members if there were any questions.

Ms. Moscato asked about financial feasibility, remarking the project demonstrates just under $100 million gross revenue and net of $48 million, with a 13 to 14% margin. She asked about the revenue specific to swing bed use and an estimate of what medical/surgical versus swing bed use was considered to bring these estimates about.

Darlene Rodowicz, President and CEO, Berkshire Health Systems, Inc. said as it relates to financial performance, since the closure of North Adams Hospital 10 years ago there has been a need for in-patient services, but because of the low density of the community the only way to make services viable is through critical access hospital which brings with it cost based reimbursement. There isn’t enough volume, given the population in North County, to be able to run an in-patient service without hemorrhaging. They are expecting the volume that North Adams will see in an in-patient observation basis will come from patients that are currently receiving treatment at Berkshire Medical Center. They will not be able to move all of the staff from Pittsfield because of the way nursing ratios work and the size of the nursing units. There will be a bit of inefficiency coming out of this to bring quality care closer to people’s homes. The net benefit to the health system is $1 million between the two organizations. You will see an increase at North Adams Regional and the margin that a critical access hospital has will be at the expense of the efficiency that Berkshire Medical. The proforma did not anticipate swing beds in these numbers. At Fairview Hospital they have no more than one swing bed patient a day. They rely on Fairview Hospital to take some of the BMC ED patients and ask patients if they would be willing to go to Fairview Hospital for their inpatient care.

Ms. Moscato mentioned the concern from Mass Senior Care and two local nursing homes about their Medicare units impacting short term rehab, but it appears there will be minimal impact on swing bed use. She asked about recruiting the workforce and if workers will be drawn from the nursing home setting and what that would do to the community.

Ms. Rodowicz said they are sensitive to the issues surrounding the workforce. They are expecting to hire around 70 individuals to be able to open up in-patient services as well as the support that go along with it. So far, they only have one applicant from the nursing home industry, while the rest of the hires have been coming from the Berkshire Medical Center workforce. They are also making an investment in the community trying to raise those that would like to enter the health care workforce but have not been able to due to life circumstances. They have invested $6 million a year to create the workforce of the future and work with local schools to train future employees while paying them salaries and tuition. They have no need to recruit from local nursing homes. They will phase in workers and patients and slowly increase capacity as they become stable. They have been dependent on contract labor since the pandemic and will use contract labor to fill vacancies.

Ms. Moscato asked if the $2.8 million to invest in the hospital was toward upgrading in-patient rooms.

Ms. Rodowicz said yes it was, along with a new elevator and some work on the operating rooms.

Dr. Carey said she was struck by some of the numbers she read, such as the North Adams hospital had 117 beds and this application is for 18, and also the number and percentage of BMC acute care discharges from North Adams were very high and she asked if that hospital has been at higher occupancy than the recommended industry standard. She asked if the 18 requested beds were enough for what seems to be high demand.

Ms. Rodowicz said North Adams was running at roughly 45 beds upon their closure, not near their capacity. Also included in the 117 beds was a family birthplace that they are not proposing to open, as well as behavioral health unit that they also are not proposing to open at this time. They offer all the pre-natal care in North County but not the delivery services. North Adams closed their behavioral health two years prior to closing due to staffing and low capacity to cover its costs. At a critical access hospital, you can only have ten behavioral health beds. They are not cost based reimbursed, so they are under PPS rules which would be difficult to run with only 10 beds. They also have two distinct part behavioral health units in Pittsfield, and they operate only one based on demand. She answered why they did not go with 25 beds instead of the 18, saying that new hospital regulations allow only private rooms so when they looked at the nursing units, they could fit only 18 beds. If there is demand, they have another building that can be renovated which would be a significant increase.

Dr. Haddad asked if there was a functional emergency room in North Adams.

Ms. Rodowicz said there is a satellite emergency facility with ten rooms and staff provided by Berkshire Medical.

Dr. Haddad said to have an acute hospital, even if it’s small with more staff, you would assume the rate of transfers to the larger center would decline.

Ms. Rodowicz said the opening of a critical access hospital will be a significant benefit to the community, to EMS providers, and a relief valve for Pittsfield.

Dr. Cruz-Davis asked what was in place to increase diversity in staffing.

Ms. Rodowicz said the programs in which they invest to train future workers are very diverse. They have 300 people in training programs and have graduated 170 that are working for them.

With no further questions, Commissioner Goldstein asked if there was a motion to approve the request by Berkshire Health Systems, Inc. for an original license.

Dr. Carey made the motion, which was seconded by Dr. Cruz-Davis. All other present members approved.

1. **REGULATIONS**
2. *Request to Promulgate Recission of 105 CMR 159.000, COVID-19 Vaccinations for certain staff providing home care services in Massachusetts* ***(Vote)***

Commissioner Goldstein invited Robin Lipson, Deputy Secretary for the Executive Office of Elder Affairs, to present a request to promulgate a rescission of regulations regarding COVID-19 vaccination for staff providing home care services.

Upon the conclusion of the presentation, Commissioner Goldstein asked the members if there were any questions.

Mr. Engell commented that he believed this was a step back from a comprehensive approach that was tried in the health sector for mitigating the spread of respiratory illnesses and asked why we would want to rescind measures in place. He said in reading the regulations, these seemed to be a bit different, noting that the employee must have a strongly held religious belief to decline vaccination.

Ms. Lipson reminded the council that the regulation under consideration for recission was promulgated by the Department to regulate entities that are not licensed by them. It was done in a public health emergency where they wanted consistent and widespread use of the vaccines. She said this sector is not an institutionally based provider organization. These are organizations that employ many aides who may or may not ever enter into a single place of work or office and work with a small number of clients. The factors that led to recommending recission are first, that this is not a sector that is equipped to collect information about their employees, and it would be a cost prohibitive burden to ask them to do so. Secondly, because these providers don’t have the infrastructure for data collection, they have created a personal relationship with their employees and are aware that these employees can work anywhere with the demand for home care workers. The employer’s practice is to encourage and educate people. They don’t feel they are able to require and then enforce vaccination with their employees because they don’t have the infrastructure to do the reporting like hospitals and other institutions do. We are reluctant to have a requirement we can’t enforce, and they are reluctant to have a requirement that they cannot administer. She said many of these workers also work in other facilities where the requirement for vaccination is still in place.

Commissioner Goldstein said that they want as many people as possible in the health care setting to be vaccinated, but this is a sector of the health care system that is not licensed by the Department. We regulated them during a public health emergency which is now over and we have to go back to our regulatory capabilities. Before this recission was even prepared for presentation, a letter was sent out with the Commissioner’s and Secretary of Elder Affairs Chen’s name on it urging this sector to encourage their employees to continue to acquire vaccinations.

Dr. Carey said a strong case was made for the practical reasons for recission and although we don’t want to see a dismantling of regulations, a case is to be made regarding the home care work shortage potentially exacerbated by mandatory vaccination.

Ms. Lipson agreed saying she failed to mention there are many “multi-cultural” agencies that employ numerous people whose first language is not English, and the agencies have worked hard to educate these people in their language to understand the importance of vaccination.

Ms. Moscato agreed that the infrastructure problems for these small home care agencies has always been an issue over the years and asked if the non-institutional receive MassHealth funding.

Ms. Lipson replied yes, non-licensed but MassHealth funded.

With no further questions, Commissioner Goldstein asked if there was a motion to promulgate the recission of 105 CMR 159.000, COVID-19 vaccinations for certain staff providing home care services in Massachusetts.

Dr. Haddad made the motion, which was seconded by Dr. Volturo. Mr. Engell and Mr. Landers voted no. All other present members approved.

With no further questions, Commissioner Goldstein stated that this concluded the final agenda item for the day and reminded the Council that the next meeting is scheduled for Wednesday, January 10, 2023, at 9 AM.

Commissioner Goldstein asked if there was a motion to adjourn.

Dr. Bernstein made the motion which was seconded by Mr. Landers. All present members approved.

The meeting was adjourned at 11:03 am.