**MINUTES OF THE PUBLIC HEALTH COUNCIL**

**Meeting of February 10, 2016**

**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: Wednesday, February 10, 2016 9:00 AM**

1. **ROUTINE ITEMS:**
2. Introductions
3. Updates from Commissioner Monica Bharel, MD
   1. Nursing Homes: Issues, Solutions, Next Steps
4. Record of the Public Health Council Meeting January 13, 2015 **(Vote)**

**2. PRELIMINARY REGULATIONS**

a. Informational briefing on proposed regulatory amendments to 105 CMR 620: *Bedding, Upholstered Furniture and Related Products*

b. Informational briefing on proposed regulatory amendments to 105 CMR 630: *Labeling Requirements for Plastic Bags and Plastic Films*

c. Informational briefing on proposed regulatory amendments to 105 CMR 270:

*Blood Screening of Newborns for Treatable Diseases and Disorders*

**3. FINAL REGULATIONS**

a. Request for Final Promulgation on Proposed Amendments to 105 CMR 120 Massachusetts Regulations for the *Control of Radiation* **(Vote)**

**4. PRESENTATIONS**

a. Public Health Accreditation, Performance Management and Quality Improvement Updates

b. Cancer Survivors Wellness

**4. EXECUTIVE SESSION**

The Public Health Council will meet in Executive Session as authorized by M.G.L. c. 30A, s. 21(a)(3) for the purpose of discussing strategy with respect to litigation, specifically Southcoast Hospital Group, Inc. v. The Massachusetts Department of Public Health, et al

*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, February 10, 2016

**Beginning Time: 9:18AM**

**Ending Time:** **11:39AM**

**Attendance and Summary of Votes:**

| **Board Member** | **Attended** | **Item 1c**  **Minutes of the January 13, 2016 Meeting** | **Item 3a**  **Request for Final Promulgation on Proposed Amendments to 105 CMR 120.000 *Massachusetts Regulations for the Control of Radiation*** |
| --- | --- | --- | --- |
| Monica Bharel | Yes | Approved | Approved |
| Edward Bernstein | Yes | Approved | Approved |
| Derek Brindisi | Absent | Absent | Absent |
| Harold Cox | Absent | Absent | Absent |
| John Cunningham | Yes | Abstained | Approved |
| Michele David | Absent | Absent | Absent |
| Meg Doherty | Yes; Arrived at 9:27AM | Approved | Approved |
| Michael Kneeland | Yes | Approved | Approved |
| Paul Lanzikos | Yes | Approved | Approved |
| Denis Leary | Yes | Approved | Approved |
| Lucilia Prates-Ramos | Absent | Absent | Absent |
| Jose Rafael Rivera | Yes | Approved | Approved |
| Meredith Rosenthal | Yes | Approved | Approved |
| Alan Woodward | Yes | Approved | Approved |
| Michael Wong | Absent | Absent | Absent |
| **Summary** | **10 Members Present, 5 Absent** | **9 Approved, 1 Abstained, 5 Absent** | **10 Approved, 5 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, February 10, 2016 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 Monica Bharel, Chair; Edward Bernstein, MD; John Cunningham, PhD; Meg Doherty; Michael Kneeland, MD; Paul Lanzikos; Denis Leary; Jose Rafael Rivera; Meredith Rosenthal, PhD; and Alan Woodward, MD.

Absent member(s) were: Derek Brindisi; Harold Cox; Michele David, MD; Lucilia Prates-Ramos; and 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 9:18AM and made opening remarks before reviewing the agenda.

**ROUTINE ITEMS**

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

To open the meeting, Commissioner Bharel gave several updates to Council members.

As a follow up to information presented at a previous meeting and in response to member questions, Commissioner Bharel presented data regarding tobacco use and cessation broken down by different population groups, including by race and socioeconomic status.

The Commissioner provided an update on efforts to address the Governor’s opioid initiatives, and discussed a recent meeting with several prescriber groups at the Massachusetts Medical Society. She noted that the meeting included nurse midwives, nurse anesthetists, physician assistants, nurse practitioners, representatives of community hospitals, dentists, pharmacies and pharmacists, podiatrists, and veterinarians. She noted that the meeting included a diverse group of prescribers, and at the meeting collaboratively developed pain management core competencies were discussed. The Commissioner stated that at the meeting these groups pledged to take these competencies back to their professional group organization members for review and adoption.

Commissioner Bharel then provided an update on the zika virus to members. She provided some history on the virus, and how the virus may present itself. The Commissioner noted that in May of 2015 a rise in birth defects in Brazil, and there seemed there may be a link between zika virus and these defects. Commissioner Bharel noted that the majority of people infected never show symptoms, and those that do show very mild symptoms. She noted that the most probable way to contract zika virus is presence in an affected geographic area, such as South America and the Caribbean. The Commissioner further noted there has been some discussion of possible sexual transmission and emphasized that our knowledge of this disease is evolving, and that the Department will continue to track the virus and work with its Centers for Disease Control partners and medical providers, including OB/GYNs. She stated there’s still a lot to learn about zika virus, and noted that the specific mosquito that carries zika virus does not breed in Massachusetts. She concluded by emphasizing that microcephaly is still very rare here, and that the Department will continue to work closely with medical providers and continue to emphasize prevention strategies.

Commissioner Bharel noted she recently conducted her second all-staff meeting at the Department, in conjunction with her one year anniversary as Commissioner. She highlighted a few of her visions for the coming year for members, including: 1) doubling down on how DPH uses its vast data resources, including standardization and consistency across data sets; 2) creating a predictive modeling tool for identifying opioid deaths so we can begin to hotspot certain areas; 3) operationalize DPH’s performance metrics framework; and 4) strengthening DPH’s relationship with local boards of health and other stakeholders. She noted that the former Bureaus of Infectious Disease and Laboratory Sciences have now been merged into a single bureau: the Bureau of Infectious Disease and Laboratory Sciences. She noted that Kevin Cranston has been appointed Associate Commissioner as Director of this new Bureau, while Mike Pentella will continue to direct the laboratory sciences portion of work done. Additionally, the Commissioner noted that Georgia Simpson May, Director of the Office of Health Equity, will be leaving the Department to pursue an opportunity as regional minority health consultant for federal Health and Human Services New England Region I. Commissioner Bharel noted that she has asked Bureau of Substance Abuse Services Director Lydie Ultimo to step into a new role examining health equity.

Mr. Rafael Rivera asked if discussions around pain management have included input from non-Western medical practitioners and experts regarding non-medical pain management.

Commissioner Bharel responded that the groups she is meeting with target those groups who are prescribing or dispensing opiates at this time, so part of this effort is to align around how we should be prescribing opiates. She noted that one of the prevention core competencies is to understand both opiate and non-opiate pain management options.

Mr. Lanzikos congratulated the Commissioner on her appointment of Kevin Cranston as Associate Commissioner. He asked if Mr. Cranston’s appointment was effective.

Commissioner Bharel confirmed he is presently serving in this role.

Updates also included a presentation on Nursing Homes: Issues, Solutions, Next Steps. Commissioner Bharel provided an overview of DPH’s oversight of long term care, including licensure and inspections. She distinguished that inspections occur through routine surveys and complaint, with issues found resulting in a deficiency issued to the facility. The presentation also included a summary of deficiency severity, available enforcement and sanction actions, and summary data on deficiencies in Massachusetts nursing homes as compared to nationwide.

Members asked questions during the presentation. Dr. Kneeland asked why UTI was included as a measure.

Commissioner Bharel noted that this is one quality of care, reportable adverse event measure reported to CMS, and noted that the list includes more measures and conditions.

Dr. Bernstein noted it is difficult to determine the relationship without a standard deviation of p-value.

Commissioner Bharel responded that DPH could work to obtain statistics for the data.

Dr. Woodward noted that the Commissioner indicated the data shows a sampling of data measures, and asked if this sampling is representative of the overall trend.

Commissioner Bharel responded that this data is representative of the broader trends.

The Commissioner continued the presentation, which included information on solutions centered around safety, quality, and transparency. She mentioned some of this work can be done in absence of statutory or regulatory changes, but that some solutions will be addressed through the DPH regulatory review process. Commissioner Bharel also discussed implementation of a SPOT – Supportive Planning and Operations – Team, designed to proactively address issues and improve patient safety and quality care. She mentioned that this team will be part of a one year pilot and will perform unannounced visits to facilities.

Dr. Bernstein asked when developing performance indexes if DPH could take into account disparities across socioeconomic groups. He also mentioned suicide could be considered as a measure.

Commissioner Bharel thanked Dr. Bernstein for his suggestion.

Mr. Rafael Rivera asked if the total number of complaints includes complaints or incidents reported from friends, family, or loved ones.

Commissioner Bharel responded that the total number of complaints does include all complaints – from residents, family members, facility workers, and others.

Dr. Woodward noted he was surprised to see the data on antipsychotropic medication administration and higher administration in Massachusetts. He also noted that the fee per day seems like a token amount and suggested there may be ways to look at modifying the fine structure. Lastly, he discussed the importance of having Mass Senior Care as a partner on this. He concluded by saying that there have been efforts in the past to address this, but from his understanding there are still some outliers and that some licenses may need to be taken away to show the seriousness of this as these facilities serve some of our most vulnerable populations.

Commissioner Bharel noted that DPH does have data indicating there has been a significant decrease in antipsychotropic medication administration in Massachusetts, and believes the trend extends nationally as well. She indicated she would provide this information to members. Regarding fines, Commissioner Bharel noted that the amount is statutory.

Dr. Rosenthal commended the Commissioner on her work and its proactive nature, noting it is refreshing. She indicated she imagines quality improvement work in long term care facilities is quite different from inspection and licensure work, and hopes the Department will have the opportunity to bring on expertise around quality improvement work in these settings. Dr. Rosenthal noted that acute settings are looking at their interaction with long term care settings, so there may be an opportunity to collaborate across these settings and build on the quality of care experience acute settings have.

Ms. Doherty indicated she would like to see home health added to the list of stakeholders and indicated there is significant work occurring in quality improvement with home health and acute and long term care settings.

Mr. Lanzikos urged the Commissioner to expand the scope of this review to a related but separate activity. He indicated that the presentation makes perfect sense for long term care as it exists now. He noted that today skilled nursing facilities see a variety of patients and provide a variety of services, such as short term rehabilitation care or long term dementia care, but despite this, state law and regulations treat all long term care settings the same. He indicated that in the 1990s the Public Health Council removed itself from the oversight of long term care capital projects, but that since 2009 there have been significant changes involving many beds and high capital expenditures with little public oversight using the same care delivery model from 50 years ago. He concluded by saying he thinks DPH and the Council has a duty to help shape the vision for long term care moving forward, including use and location of these beds.

Mr. Lanzikos raised some ambiguity in the language around voluntary admission freezes for closures, and has since learned from staff that such freeze on admissions is voluntary. He asked if we could consider a way to clearly indicate at what point admissions must be frozen.

Commissioner Bharel noted that the Department will look at that language as it moves through this process. She also indicated that the rapid response teams represent an approach that can be taken under existing regulatory authority, but that longer term approaches will be examined.

Dr. Bernstein noted that he understands that short stay nursing homes do not allow residents to receive medication assisted treatment, and if there was a way to address this. He also indicated that this work should focus on how to increase the quality of life for residents of nursing homes, and what more could be done to improve their time there.

The Commissioner indicated the Department will take a look at that, particularly as it relates to any federal oversight or requirements or limitations.

1. **ROUTINE ITEMS**
2. Minutes

Commissioner Bharel asked if any members had any changes to be included in the January 13, 2016 meeting minutes.

Seeing no changes, the Commissioner requested a motion to approve the minutes.

Mr. Rivera made a motion to approve, and Dr. Woodward seconded the motion. All approved, except Dr. Cunningham who abstained as he was not present at the meeting.

**2. PRELIMINARY REGULATIONS**

**a. Informational briefing on proposed regulatory amendments to 105 CMR 620: *Bedding, Upholstered Furniture and Related Products***

Commissioner Bharel invited John Halter, Chief of Regulatory Affairs for the Bureau of Environmental Health, to the table for a presentation on proposed amendments to 105 CMR 620.000: *Bedding, Upholstered Furniture and Related Products*. He was joined by Michael Moore, Director for the Food Protection Program within the Bureau of Environmental Health, and Kay Doyle, Deputy General Counsel.

Upon conclusion of the presentation, Commissioner Bharel asked if Council members had any questions for Mr. Halter, Mr. Moore, or Ms. Doyle.

Mr. Lanzikos asked if bed bugs fall under the Bureau of Environmental Health’s work and jurisdiction.

Mr. Moore responded that it does – investigations are conducted, most often for individuals renting mattresses.

Mr. Lanzikos asked for an update on the state of bed bugs in Massachusetts at a future meeting, as it seems this is becoming more of an issue and of increasing public health concern.

**b. Informational briefing on proposed regulatory amendments to 105 CMR 630: *Labeling Requirements for Plastic Bags and Plastic Films***

Mr. Halter, Mr. Moore, and Ms. Doyle remained at the table for a presentation on proposed amendments to 105 CMR 630.000: *Labeling Requirements for Plastic Bags and Plastic Films*.

Upon conclusion of the presentation, Commissioner Bharel asked if Council members had any questions for Mr. Halter, Mr. Moore, or Ms. Doyle.

Mr. Lanzikos noted that this regulation seems like one designed to cover the industry, but noted he understands the need and agrees with the proposed amendments.

Dr. Woodward indicated that as many communities move to ban the use of plastic bags, it will be interesting to see the applicability of this regulation.

Commissioner Bharel thanked Mr. Halter, Mr. Moore, and Ms. Doyle for their presentation.

**c. Informational briefing on proposed regulatory amendments to 105 CMR 270:**

***Blood Screening of Newborns for Treatable Diseases and Disorders***

Commissioner Bharel invited Michael Pentella, Director for Laboratory Sciences within the Bureau of Infectious Disease and Laboratory Sciences, Jim Ballin, Deputy General Counsel, and Anne Comeau, Deputy Director for the New England Newborn Screening Program, to the table for a presentation on proposed amendments to 105 CMR 270.000: *Blood Screening of Newborns for Treatable Diseases and Disorders*.

Upon conclusion of the presentation, Commissioner Bharel asked if Council members had any questions for Mr. Pentella, Mr. Ballin, or Dr. Comeau.

Dr. Cunningham noted that he has some issue with collection of the specimen, as it indicates all must agree to collection of the specimen and asked if that was intentional.

Dr. Comeau responded that the language refers to the mechanism available to refuse mandatory newborn screening and the requirement for all legal guardians of the infant to sign their agreement in order to refuse collection of a specimen for screening.

Dr. Cunningham asked a question about the distinction between information available for mandatory screenings and optional screening tests.

Dr. Comeau responded that the actual list of optional tests will be removed from the regulation, but available in materials distributed to all new parents and on the Program’s website. She indicated that the reason for removing the list is that this will provide more flexibility as more optional tests become available.

Dr. Kneeland asked if the number of mandatory screening refusals is tracked.

Cost

Dr. Comeau indicated that this is tracked somewhat anecdotally now, but that this will be better tracked moving forward by the providers utilizing the form to document a screening refusal.

Dr. Kneeland asked if the form tracks the reason for refusal.

Dr. Comeau indicated the form does not include a field for that, mostly due to space constraints. She indicated that until recently, most refusals were reported to be due to do-not-resuscitate orders for the infant. She responded that there seems to be an increase in individuals refusing over right to privacy concerns.

Mr. Lanzikos asked if there was a cost-benefit analysis conducted prior to moving tests from the optional to mandatory test list.

Dr. Comeau responded that cos- benefit analyses are complex and difficult to do for each of these tests, and added that there is not one accepted standard or method to conduct such an analysis for these tests.

Mr. Lanzikos asked about the cost implications for the tests proposed to be moved from optional to mandatory testing.

Dr. Comeau responded that one of the tests has minimal costs, while the other represents one of the more expensive on the list. She noted that the costs were something to be kept in perspective, that the cost of the entire panel was likely less than the cost of many familiar tests, e.g., a CBC.

Mr. Lanzikos asked if there is anticipated pushback on the cost of the tests.

Dr. Comeau indicated some hospital groups may raise the cost of the tests as an issue.

Mr. Rafael Rivera asked if there was a way to engage midwives and doulas on disseminating this information.

Dr. Comeau responded that this information is disseminated to parents in multiple languages. She noted that this is a requirement of birthing institutions at birth. She indicated that there are attempts to disseminate this information prenatally as well, but the dissemination at birth ensures the information makes it to the parents. She indicated that there have been attempts to engage professional groups such as doulas, and that the Program would welcome suggestions about how to better connect with these groups.

Dr. Bernstein asked if there was a required incidence in order for some of conditions to be moved onto the list of mandatory screening tests.

Dr. Comeau indicated there isn’t a specific requirement. She noted that while it may seem to make more sense to screen for more frequent conditions, an alternative argument could be made in favor of less common conditions: She indicated some more common conditions may be more readily ascertained by the practitioner, whereas it may be public health’s role to ensure more rare and complex conditions are screened for.

Dr. Woodward asked for the number of births last year in Massachusetts and the number of screening refusals. He indicated that the statute cites religious exemption, but noted that Ms. Comeau indicated some refuse on the basis of privacy reasons. He asked how this reasoning is allowed under statute.

Dr. Comeau indicated that there were 73,000 births, with around 10 to 40 refusals of mandatory screening and deferred the legal question to Mr. Ballin.

Mr. Ballin responded that the statute does allow citing refusal for religious reasons, and indicated that these beliefs and the basis for the exemption are not further examined.

Dr. Woodward asked about the time reduction for sample retention to 15 years.

Dr. Comeau responded that this is relative to privacy concerns. She noted that these samples are stored per DPH policy, are used for quality assurance, and indicated that such stored specimens are also used for new test development. Prior to accessing a specimen for new test development, parent permission is obtained. Dr. Comeau noted that the test development for SCID, which has a frequency of approximately 1 in 100,000, required retrieving specimens that had been in storage for about 15 years. This information was used to set the limit on retention time.

Dr. Bernstein asked if the Program sees any shift in parent attitudes for this testing as DNA testing becomes more prevalent.

Dr. Comeau noted that the program already provides DNA testing and responded that she does believe there will be a significant shift in parent attitudes so long as we ensure this is done responsibly and transparently.

**3. FINAL REGULATIONS**

**a. Request for Final Promulgation on Proposed Amendments to 105 CMR 120 Massachusetts Regulations for the *Control of Radiation* (Vote)**

Commissioner Bharel invited Mr. Halter to the table for a presentation and request for final approval on proposed amendments to 105 CMR 120.000: Massachusetts Regulations for the Control of Radiation. He was joined by Mr. Ballin and Joshua Daehler, Supervisor of the Radioactive Materials Unit within the Bureau of Environmental Health’s Radiation Control Program.

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

Seeing no questions from members, Commissioner Bharel requested a motion to approve amendments to 105 CMR 120.000 – *Massachusetts Regulations for the Control of* Radiation for promulgation. Dr. Woodward made a motion to approve, and Dr. Bernstein seconded the motion. All approved.

Dr. Rosenthal and Dr. Woodward briefly left the meeting at 10:49AM.

**4. PRESENTATIONS**

**a. Public Health Accreditation, Performance Management and Quality Improvement Updates**

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**a. Public Health Accreditation, Performance Management and Quality Improvement Updates**

Commissioner Bharel invited Antonia Blinn, Director of Performance Management and Quality Improvement, to the table for a presentation on performance management and accreditation at the Department of Public Health.

Dr. Rosenthal and Dr. Woodward returned to the meeting at 10:52AM.

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

Mr. Rivera asked if territories such as Guam and Puerto Rico are eligible to apply for accreditation.

Ms. Blinn indicated she believes these territories are eligible.

Dr. Kneeland left the meeting at 10:59AM.

Dr. Woodward asked where the State Health Improvement Plan (SHIP) fits into this accreditation process.

Ms. Blinn responded that this effort is all about alignment, and that during this effort the group has gone back to the SHIP to see which measures were identified and where work can be done. She noted that the strategic plan was also a guiding document.

Mr. Lanzikos asked who sits on the accreditation board and who conducts site visits for accreditation.

Ms. Blinn noted she can get a list of board members to the Council members, and indicated that site visits are conducted by quality improvement, performance management or other local, regional or state health department peers. She noted that the visitors divide the 12 focus areas into thirds, to spread out the domains so that not just one person is focused on all domains.

Commissioner Bharel indicated the Board consists of executive directors of health boards, public health practitioners, and academics.

Dr. Bernstein briefly left the meeting at 11:04AM.

Commissioner Bharel thanked Ms. Blinn for her presentation and concluded by saying her work has allowed the Department to focus on how to move quality improvement initiatives, like accreditation, forward and thanked her for her work thus far.

**b. Cancer Survivors Wellness**

Commissioner Bharel invited Lea Susan Ojamaa and Anita Christie, both from the Bureau of Community Health and Prevention, to the table for a presentation on the Bureau’s cancer survivorship and wellness work.

Dr. Bernstein returned to the meeting at 11:05AM.

Upon conclusion of the presentation, Commissioner Bharel asked if Council members had any questions for Ms. Ojamaa or Ms. Christie.

Mr. Lanzikos asked if the printed guides are available in bulk.

Ms. Christie indicated that there is a process for that through the Massachusetts Clearing House.

**4. EXECUTIVE SESSION**

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Commissioner Bharel requested a motion from Council members to enter Executive Session.

Dr. Rosenthal so moved, seconded by Mr. Leary. Commissioner Bharel then completed a roll call of Council members.

Commissioner Bharel indicated that the next meeting will be held March 9th, and indicated the meeting will be adjourned upon conclusion of the Executive Session.

The meeting adjourned at 11:39AM.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

* Minutes of the Public Health Council Meeting January 13, 2016
* Copy of proposed amended regulation and presentation discussing proposed amendments to 105 CMR 620.000: *Bedding, Upholstered Furniture and Related Products*
* Copy of proposed amended regulation and presentation discussing proposed amendments to 105 CMR 630: *Labeling Requirements for Plastic Bags and Plastic Films*

Copy of proposed amended regulation and presentation discussing proposed amendments to 105 CMR 270: *Blood Screening of Newborns for Treatable Diseases and Disorders*

* Copy of regulation and presentation requesting final approval of proposed amendments to 105 CMR 120 Massachusetts Regulations for the *Control of Radiation*
* Copy of presentation discussing Public Health Accreditation, Performance Management and Quality Improvement Updates
* Copy of presentation discussing the Department’s efforts around Cancer Survivors Wellness

Commissioner Monica Bharel, Chair