MINUTES OF THE PUBLIC HEALTH COUNCIL

MEETING OF FEBRUARY 9, 2011

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

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

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Updated Docket: Wednesday, February 9, 2011, 9:00 AM

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1. ROUTINE ITEMS: No Floor Discussion

   a. Compliance with Massachusetts General Laws, Chapter 30A (No Vote)

   b. Record of the Public Health Council Meeting of December 15, 2010 (Approved)

2. PRESENTATION: No Vote/Information Only

"2010 Betsy Lehman Patient Safety Recognition Award", by John Auerbach, Commissioner, Department of Public Health

3. PROPOSED REGULATIONS: No Floor Discussion/Information Only (No Votes)

   i. Informational Briefing on Proposed Regulations Governing Nutrition Standards for Competitive Foods in Schools, 105 CMR 225.000

   ii. Informational Briefing on Proposed Regulations Establishing Standards for School Wellness Advisory Committees, 105 CMR 215.000

3. REGULATION: No Floor Discussion

   Request for Approval to Promulgate New Regulation: 105 CMR 129.000, Health Insurance Open Enrollment Waivers (Approved)

4. DETERMINATION OF NEED: COMPLIANCE MEMORANDUM:
   Previously Approved Project No. 1-3B36 of Baystate Medical Center, Inc. – Request for a significant change to increase the project's approved Gross Square Feet including the previously approved shell space to be built-out and to increase the project's Maximum Capital Expenditure (Approved)

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

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on February 9, 2011, at 9:15 a.m., 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: Chair John Auerbach, Commissioner, Department of Public Health, Ms. Helen Caulton-Harris, Dr. John Cunningham, Dr. Michèle David, Dr. Muriel Gillick, Mr. Paul Lanzikos, Ms. Prates Ramos, Mr. José Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman (arrived at 9:25 a.m.), and Dr. Alan Woodward. Absent members were: Mr. Harold Cox, Mr. Denis Leary, Dr. Michael Wong and Dr. Barry Zuckerman. Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Chair Auerbach announced that notice of the meeting has been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance. Chair Auerbach made introductory remarks and further noted that the next meeting of the Council will be held on March 16, 2011 instead of March 9th as previously scheduled and will begin ½ hour later at 9:30 a.m. instead of the usual 9:00 a.m.

RECORD OF THE PUBLIC HEALTH COUNCIL MEETING OF DECEMBER 15, 2010:

Council member José Rafael Rivera made the motion to approve the minutes of December 15, 2010. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the minutes of December 15, 2010 as presented.

PRESENTATION: NO VOTE/INFORMATION ONLY: "2010 BETSY LEHMAN PATIENT RECOGNITION AWARD", BY JOHN AUERBACH, COMMISSIONER, DEPARTMENT OF PUBLIC HEALTH:

Commissioner Auerbach, Chair of the Public Health Council presented the award and he noted: "...the Betsy Lehman Center was established now several years ago, as an entity to focus on the ways that we can improve patient safety and patient quality of care, and it has been involved in a number of different activities. Included in those activities have been reports that have been presented to the Council on a variety of different topics, including one on hospital-associated infections, and the ways that we could take action steps to reduce those."

He continued, "The Lehman Center each year identifies a key area of importance with regard to promoting health care quality and patient safety and then it encourages hospitals around the state to apply in that category, by highlighting some work that they have done. This year, this is the 6th Annual Betsy Lehman Award, and the focus of this year's award was on the topic of care transitions. Care transitions refer to a situation where a patient is transferred from one setting or from one set of providers to another. For example, when a patient is leaving a hospital after an acute episode and may be going into a rehabilitation facility, and often this is an area where there can be difficulties that arise."

Chair Auerbach explained further, "There can be poor coordination of care as the patient moves from one facility to another, sometimes inadequate information accompanies the patient so that the receiving institution is unaware of what tests have been performed or sometimes even what medications the patient is on. This is a problem when the health of the patient is complex and when there is a need for a lot of different considerations about how to keep the patient stable and improving, and it is obviously especially problematic when the patient is in frail health and vulnerable to the occurrence of a number of different adverse medical events."

Chair Auerbach noted how coordinated care transitions can lead to reduction in health care costs because costs increase if a patient has to be readmitted to a hospital due to unnecessary complications. The Department received many outstanding applications for the Award this year but found the recipient of this year's award MetroWest Medical Center, the Vanguard Health System to be the strongest proposal because of their "impressive commitment to improving care transitions for patients and their families, especially those patients that are living with the challenges of congestive heart failure, a condition that often results in high levels of hospital readmission."

Ms. Linda Campbell, R.N., Director, Quality and Patient Safety, MetroWest Medical Center/Vanguard Health Systems made a PowerPoint presentation highlighting their program. She spoke about their Patient Family Advisory Council and how every member wanted to focus on the discharge process and transition process back in 2009. She said the advisory council members talked about confusing and disorganized discharges with confusing discharge instructions and long waits for paperwork which should have been done in advance. Also in 2009, the STAAR Project (State Action on Avoidable Rehospitalizations) began in September and they joined that and met regularly with other hospitals. They focused on heart failure patients. These patients have difficulty in managing their diseases and usually have frequent hospitalizations. The hospital identified two pilot units in their hospital, one at each of their campuses. They put together a cross-continuum team consisting of front-line caregivers: nurses, case managers, and the people who are at the bedside working with the patients. In addition MetroWest partnered with other outside providers of health care such as home care services, long term care facilities, and elder service agencies and created a transition team for their area.

Ms. Campbell noted and the proposal program description further states in part, "...The teams developed strategies and processes for enhanced teaching and learning, admission and post discharge needs. All tools and strategies were tested on the pilot units using

Rapid Cycles of Change methodology. Early in the STAAR initiative the focus was hospital centric with improvement in patient educational materials and processes that bridged hospital to home care. The interventions embarked upon included: improvement in the continuum of educational materials, use of patient/caregiver teach back methodologies, front end loaded home health visits within the first week of discharge, and after care appointments with the physician within the first week of discharge..."

Ms. Campbell noted further that they now plan to go beyond the original scope of their project, and are partnering with another vendor to help them with risk stratification methodology so they can reach their high risk patients. They have implemented a Palliative Care Service and plan to apply their successful strategies to other hospitals in the Vanguard Health system.

Discussion followed by the Council. Please see the verbatim transcript for the entire presentation and discussion. Mr. Paul Lanzikos asked Ms. Campbell to return to the Council in a year to provide a report on the impact of their new Palliative Care Service. Chair Auerbach noted that he is impressed with how many of MetroWest's solutions don't rely on high tech solutions like electronic medical records, which is important, but rather on the team focusing on the patients' needs.

Attorney Lois Johnson, Assistant Attorney General, Health Care Division, Attorney General's Office presented the award on behalf of Martha Coakley, Attorney General. She read the plaque which states "The Betsy Lehman Center for Patient Safety and Medical Error Reduction 2010 is hereby granted to MetroWest Medical Center/Vanguard Systems for demonstrating commitment to safety, to the successful implementation of patient care management strategies, to improve care transitions across the health care continuum." It is signed by Commissioner John Auerbach.

Members of the MetroWest team who attended the meeting to receive this award included: Robert Gillesby, MD, Vanguard Regional Chief Medical Officer, Michael Gottlieb, MD, MetroWest Chief Medical

Officer, Christine Brazauskas, RN, Manager of Quality & Performance Improvement, Maria Hill, RN, Regional Vice President of Quality, Natalie Kenney, RN, MetroWest Home Care & Hospice representative, Beth Donnelly, Director of Public Relations and Community Relations and Linda Campbell, RN, MetroWest Director of Quality & Patient Safety.

NO VOTE/INFORMATION ONLY

PROPOSED REGULATIONS: INFORMATIONAL BRIEFING ON PROPOSED REGULATIONS GOVERNING NUTRITION STANDARDS FOR COMPETITIVE FOODS IN SCHOOLS, 105 CMR 225.000:

Dr. Lauren Smith, Medical Director, Department of Public Health presented information on proposed Regulations 105 CMR 225.000. She began with data on childhood obesity, stating in part, "...It is clear that starting from the very youngest ages, including those who are two to five years old, data from our WIC Program (2007) shows that, in that age group, 18% are at risk of overweight and 15% are actually overweight. When we move into data from the Youth Health Survey of middle and high school students (2009), as well as the Youth Risk Behavioral Survey, it shows rates of overweight and obesity anywhere from about 27 and 26% total. This is self-reported data. Data from the BMI, where the school nurses weigh and measure each student and then do the BMI calculation...Out of 109,674 students in grades 1,4,7 - 16% are overweight and 17% obese (2008-2009).

Dr. Smith explained the requirements of the nutrition regulations piece on Nutrition Standards for Competitive Foods in School – 105 CMR 225.000. She said in part, "...the definition includes all food or beverages that are not part of the school breakfast, lunch, or the after school programs that are federally funded – that would include food that is sold in a la carte lines, school stores, vending machines, snack bars, as well as fund raising activities and other school-sponsored events. It specifically excludes non-sweetened, carbonated water. The statute requires DPH to establish Nutritional

Standards and the statute actually gives us guidance or sort of suggestions from where we should base these dietary recommendations, including the Institute of Medicine, the Department of Health and Human Services, the USDA among others, and the understanding is that these Nutrition Standards are meant to apply from thirty minutes before the beginning of the school day to thirty minutes after the school day..."

Dr. Smith noted further that the standards will be re-evaluated every five years so that best practices and nutrition science changes can be incorporated; there are exceptions in the law that allows school districts to decide if they want to apply the standards beyond the time frame of the thirty minutes before and after the school day. These regulations apply to booster sales, concession stands and school-related fund raising events. Plain water should be available to kids during the school day at no cost, and that fresh fruits and non-fried vegetables should be available wherever food is sold, provided, except in non-refrigerated vending machines, and that nutrition information should be available for the non-prepackaged foods. The nutritional information piece will not go into effect until 2013. Fryolators are prohibited in the use of preparing competitive foods.

Dr. Smith outlined the proposed standards as follows:

Competitive Food Standards - Beverages

- Juice: 100 % fruit or vegetable juice with no added sugar; Elem and middle – 4 oz serving; High – 8 oz serving
- Milk and Milk Substitutes: All milk/milk substitutes (incl. lactose free and soy milk) shall be low fat (1%) or fat-free; 8 oz serving;
- Meet USDA standards for fluid milk and milk substitutes; Flavored milk ≤ 22 g sugar/8 oz
- Water: Water without added sugars, sweeteners, artificial sweeteners, but can contain natural flavoring and/or carbonation
- Other Beverages: No beverages other than juice, milk, milk substitutes and water shall be sold or provided

- Beverages with added sugar or sweeteners: These will be phased out by August 2013, except for flavored milk or milk substitutes that contain same amount or less sugar than plain fat-free or low-fat milk.

Competitive Food Standards - Food

- Calories: Limit 200 calories per item, except for a la carte entrees, which shall not exceed calories in comparable National School Lunch Program entrees
- Fat, Saturated Fat, Trans Fat: No more than 35% of total calories from fat; No more than 10% of total calories from saturated fat; All foods shall be trans fat free; Exception – 1 oz of nuts, nut butters, seeds or reduced fat cheese
- Sugar: No more than 35% of total calories from total sugars, except Non-fat or low-fat yogurt with maximum of 30g sugar/8 oz or 100% added fruit with no added sugar
- Sodium: No more than 200 mg per item; Exception: no more than 480 mg per item for a la carte entrees
- Grains: All bread and other grain-based products shall be whole grain
- Artificial sweeteners: No artificial sweeteners allowed.
- Caffeine: No more than trace amounts of caffeine allowed.

Dr. Smith noted that DPH plans on developing supportive materials for school districts and Food Service and Nutrition Directors, including a list of foods and beverages that meets the guidelines, and perhaps a list of alternative fundraising activities at schools.

She noted further, “DPH will work with the Department of Elementary and Secondary Education to implement these nutritional standards, which would include developing trainings in nutrition and diet for Food and Nutrition Service Directors. We will work with DESE in the assessment of schools’ capacity and the resources and equipment that is going to be needed for them to be able to implement these recommendations.”

Discussion followed by the Council. Please see the verbatim transcript for full presentation and discussion. During discussion Ms.

Helen Caulton-Harris asked if vending machines in public school teacher's lounges are subject to these regulations. Staff researched this question. Chair Auerbach noted at the close of the meeting for the record that these regulations do indeed apply to vending machines in teacher's lounges. Ms. Laura York, Coordinated School Health Program, DPH noted that the Federal USDA regulations require that nutritional basics be included in school lunches so that milk, fruit and vegetables have to be included and that there are no Federal Requirements for Competitive foods at this time. Other items mentioned by the staff and Council Members included: schools with refrigerated vending machines must include fresh fruit in them; low calorie sport drinks are not nutritionally necessary so not included in the proposed regulations, milk and water being the preferred drinks for students to drink.

In closing, Dr. Smith noted that they will go to public hearing with the proposed regulations probably in March and return to the Council for final promulgation in late Spring and the regulations will go into effect in 2012. Dr. Smith stated, "This will give us a year to work with Elementary and Secondary Education to develop the trainings and to prepare schools to implement the standards."

NO VOTE/INFORMATION ONLY

PROPOSED REGULATIONS: INFORMATIONAL BRIEFING ON PROPOSED REGULATIONS ESTABLISHING STANDARDS FOR SCHOOL WELLNESS ADVISORY COMMITTEES, 105 CMR 215.000:

Ms. Anne Sheetz, Director of School Health Program, DPH and Ms. Carol Goodenow, Director of Coordinated School Health, Massachusetts Department of Elementary and Secondary Education gave the Council a briefing on proposed regulation 105 CMR 215.000. Staff's memorandum to the Council, dated February 9, 2011 states: "The proposed amendments would set uniform standards for the establishment and operation of School Wellness Advisory Committees. These committees are intended to ensure that each public school district has an established group of school staff and concerned community representatives to develop, review and implement policies related to school nutrition, nutrition education and physical activity, as well as other related student health issues."

It was noted that superintendents of the school district appoint committee members including a designee to serve as a liaison between the committee and the superintendent, and to ensure the active functioning of the committee. The committee is to include representatives from a wide range of school health and health-related disciplines. Ms. Sheetz elaborated that the committees should include a wide array of community members such as food service personnel, school nurses, school physicians, athletic personal, school facility managers, mayors, legislators, school committee members, primary care providers, board of health members, community hospital representatives, and student and parent representatives.

Ms. Sheetz noted that the statute requires that the regulations be developed by both the Department of Public Health and the Department of Elementary and Secondary Education and therefore, these proposed regulations have been developed jointly by these state agencies.

As Staff's memorandum states in part, the regulations define the scope of the School Wellness Advisory Committee's functions and responsibilities, including requirements that the Wellness committee:

- Establish and/or review district-wide wellness policies to promote student wellness, addressing school nutrition, nutrition environment, physical education, and opportunities for physical activity around the school environment, and related issues affecting student health. The policies are to include observable and measurable goals for the coming year and an evaluation process;
- On an annual basis, provide the superintendent and school committee a copy of the committee's policies, an action plan for achieving the goals and objectives...an assessment of accomplishments of the previous year and the work still needed accomplish any remaining goals or objectives.
- In setting goals and objectives, consider suggestions and recommendations from interested parties, general health data such as assessments and indicators of student health, and information about current school and school district practices that might have a bearing on student health, such as opportunities for physical activity, BMI screening data, food nutrition issues, and status of current behavioral and health services and health education programs.

Both Ms. Sheetz and Ms. Goodenow noted that many schools and districts have and had various forms of Wellness Committees through requirements of other programs as DPH's Essential School Health Service Programs, the Health Protection Fund, and under the Child Nutrition WIC Reauthorization Act of 2004. They indicated that the proposed regulations will provide consistency and permanency for all school Wellness Committees in every school district. The regulations will be supplemented by detailed Guidelines for Implementing a School Wellness Advisory Committee being developed by the Department of Elementary and Secondary Education and the Department of Public Health.

Ms. Sheetz further noted that the Wellness Committees must have at least four meetings annually and keep minutes of the meetings that should be published and available to DPH and the DESE upon request. Ms. Sheetz and Ms. Goodenow gave examples of what some communities have accomplished with their Wellness Committees. Please see the verbatim transcript for the full presentation and discussion of the Council. Ms. Goodenow noted that staff will be pulling together a lot of information for the schools districts on this and will be providing regional trainings to help school districts set-up their Wellness Committees.

During Council discussion, Council Member Helen Caulton-Harris asked that the proposed regulations be specific about the membership to be appointed by the Superintendents for the wellness committees. The memberships should include a representative from the local public health department or board and the local community hospital. Chair Auerbach concurred that these two appointments should be added to the proposed regulations before they go to the public hearing. Mr. José Rafael Rivera said, given the correlation between race, ethnicity and socioeconomic status to obesity and wellness, he would recommend that membership represent the cultural and socioeconomic make-up of the community. Mr. Paul Lanzikos recommended that Regional Wellness Committees be allowed so that several district communities can combine resources and have more effective outcomes. Chair Auerbach noted that comments made by Mr. Rivera and Dr. David that the regulatory language should be specific and include racial, ethnic and linguistic community representation on the Wellness Committees and outreach made to non-English speaking families through the ethnic press. Dr. Woodward concurred with Mr. Lanzikos about encouraging communities to work together and form Regional Wellness Committees. Chair Auerbach informed staff to include this suggestion of Regionalization in the public hearing process for feedback on it including questions on whether the regulatory language should be changed or whether training is needed by communities to implement Regionalization.

The proposed regulations are expected to return to the Council for a final vote in May 2011.

NO VOTE INFORMATION ONLY

For the record, docket item No. 4, Regulation 105 CMR 129.000 was heard, after docket item No. 5, Baystate Medical Center.

DETERMINATION OF NEED: COMPLIANCE MEMORANDUM: PREVIOUSLY APPROVED PROJECT NO. 1-3B36 OF BAYSTATE MEDICAL CENTER, INC.:

For the record, Chair Auerbach noted that Council Member Helen Caulton-Harris will recuse herself from discussion and voting on the Baystate Medical Center application due to her position as Secretary of Health and Human Services in Springfield.

Ms. Joan Gorga, Director, Determination of Need Program, presented the Baystate Medical Center, Inc. application to the Council. She said in part, "...Baystate Medical Center is before you today for a significant change to its capital construction project approved in November of 2007. The hospital is requesting a 14.6 percent increase in the maximum capital expenditure of the project, which was for construction of a seven story addition on the main campus in Springfield. The request also includes a small increase, less than one percent, in the total approved gross square footage of the project, and a change in the components of the project, which includes a build-out of about 22% of its shell space approved for the project in 2007."

Ms. Gorga continued, "One of the elements of the original project was the replacement of the Emergency Department, and the present request relates to that part of the project. The Emergency Department in place at Baystate was constructed in 1987 for an expected volume of 66,000 annual visits and the annual volume in 2010 was 114,143 visits."

Ms. Gorga noted that Baystate presented documentation in the request, demonstrating that, despite undertaken several initiatives to address ED capacity including the relocation of Outpatient Services, development of Urgent Care space, case management and programs including computer applications and bed managers; the problem is too little space and too few treatment rooms. Baystate has the third busiest ED in the Commonwealth, and the Applicant noted in the request that the 20% increase in outpatient visits in Western Massachusetts is double the increase in other parts of the state."

She noted further that Baystate will commit to 5% of the requested increase in the inflation adjusted MCE to support primary and preventative health care services and related community benefits. The increase in community benefits is just over two million dollars and will be paid over five years. This is a condition of approval. "Staff recommends approval with conditions to the request from Baystate Medical Center to increase the MCE by 14.6%, to increase the total approved new construction by 6,190 GSF to increase and build out 76,441 GSF of currently approved shell space.

Mr. Mark Tolosky, President & Chief Executive Officer, Baystate Health and Baystate Medical Center, accompanied by Dr. Niels Rathlev, MD, Chairman of Emergency Services, Baystate Medical Center responded to questions by the Council.

Chair Auerbach asked the applicant the reasons for the need for the increase in Emergency Room Space. Mr. Tolosky stated that at the time of the original project they did not want to take on the capital and debt capacity requirements to build out the shell space but anticipated that at some point they would fill-out the 300,000 GSF of shell space. He said, "We are one of the busiest Emergency Departments in the country, the only Level I Trauma Center in Western Massachusetts and the only Tertiary Referral Center…" Despite their interventions of a satellite emergency department, some urgent care space, better bed management and discharge planning they still are overwhelmed in the ED with people waiting out in the halls for care. "Our caregivers can't do this for another seven years", he said.

Dr. Niels Rathlev, Chairman of the Emergency Department at Baystate Medical Center, added, "Over the last three years, our ED volume has increased about 2 to 3% a year. We see about 2,400 visits per bay right now. The current recommendation is 1,000 to 1,200 visits per bay. We are way under the space requirements for that official base...The new plan calls for 1,252 visits per bay which is appropriate..." He further noted that they have implemented a "Just say Yes Policy" which means they accept all transfers, all the trauma and surgical cases etc. He noted the lack of primary care physicians being a frustration for them.

Dr. Alan Woodward, noted that Commissioner Auerbach and himself co-chair a committee on boarding and patient flow of emergency rooms so he asked, "Are we confident that you have optimized efficiency before expanding capacity, meaning optimizing the outflow of patients from the Emergency Department?" Mr. Tolosky replied, "We can always be better at everything we do. We know that. We have made great strides, including the satellite ED; discharge lounge for patients that don't have the capability of going home but have been discharged; inpatient bed managers; and having an electronic tracking board in the ED etc. We don't have anymore space to convert to beds. We are completely jammed..."

Dr. Niels Rathlev added that they have also created a transitional holding unit; a place where patients can wait outside of the ER to be admitted. They also use CODE HELP. Dr. Woodward asked if CODE HELP helps. Dr. Rathlev said yes, because they get help from nursing managers from the floors and the Hospitalist Service to help expedite the admissions process and help with earlier discharges from the floors. In response to further questions by Dr. Woodward, they replied that they have an occupancy rate of over 90% and that 70% of all their inpatient admissions come through the ED.

A brief discussion followed on Baystate's activities around care transitions and the need for primary care physicians. Please see the verbatim transcript for full discussion. Mr. Tolosky noted that they participate in STAAR and that they own a health plan, Health New

England, which helps with care management and that they are working on various projects on integrated care management and avoiding readmissions. Dr. Rathlev stated that "Healthcare reform isn't going to impact ED visits until you build primary care infrastructure"...He said further that they established a committee that looks at frequent visitors to the ED, particularly patients with substance abuse and psychiatric issues and try to create care plans with their primary care providers and local networks. Council member Dr. Michèle David, a primary care physician, noted in part, that in order for networks to attract primary care physicians – "primary care physicians need to be valued and treated better and that they need better support teams, patient and case managers as other sub-specialties receive. It is not just a salary issue."

Mr. Sherman moved approval of the Baystate Medical Center's significant change amendment. After consideration, upon motion made and duly seconded, it was voted unanimously [Ms. Caulton-Harris recused] to approve Previously Approved Project Application No. 1-3B36 of Baystate Medical Center, Inc. of Springfield for a significant change. Staff's memorandum to the Council, dated February 9, 2011 is attached and made a part of this record as Exhibit No. 14,970. Please see this memorandum for the conditions attached to this approval. This amendment provides for an increase in the project's approved gross square feet (GSF) including the previously approved shell space to be built-out and to increase the project's Maximum Capital Expenditure (MCE).

REGULATION: REQUEST FOR APPROVAL TO PROMULGATE NEW REGULATION: 105 CMR 129.000, HEALTH INSURANCE OPEN ENROLLMENT WAIVERS:

Attorney Carol Balulescu, Director, Office of Patient Protection and Deputy General Counsel, presented the request for approval of new regulation 105 CMR 129.000 to the Council. She said in part, "...To summarize briefly, Chapter 288 of the Acts of 2010 was enacted to address, in part, small business health insurance costs. It establishes statutory open enrollment periods, two periods in 2011 and 2012 and thereafter, just one period per year. There are exceptions in the law for individuals who involuntarily lose coverage. They can enroll outside of open enrollment within sixty-three days of a loss of coverage. The Division of Insurance (DOI) really is the entity that oversees this process and they have issued bulletins. They have changes to their regulation, 211 CMR 66 out for public hearing, as well...Chapter 288 has established a waiver process. It is for eligible individuals seeking to enroll outside of open enrollment. The duty has been assigned to the Office of Patient Protection. We do have to set the standards by regulation. We have this regulation up for vote today, 105 CMR 129.000 and because the open enrollment period ends February 15th, we do need to have a process in place for waivers that could come as early as February 16th. "

Attorney Balulescu said further, "We had a public hearing on January 10, 2011. We had six parties submit written comments. Many of the comments were outside of OPP's jurisdiction and outside of the waiver process. I think that this confirms that this is a very confusing process where enrollment is in the hands of the carriers or the Connector. DOI has oversight, and we have this little doughnut hole of a waiver process. Most of the comments were not relevant to this regulation. We did send all the comments over to DOI and they will consider those as part of their regulatory process. There are just minor changes to the regulation that you saw in December, mostly clarifications. One to make it absolutely clear that DOI is the agency that is responsible for the conduct of the health insurers around

enrollment issues, that waiver recipients have to go back to the insurance carrier to which they originally applied and I added clarifications to the contact information that has to be provided to OPP, including the date. I inadvertently had them required to report before the regulation would take place. We are proposing to change that date..."

Chair Auerbach added, "...You will remember that we had to have a little mini course in insurance last time we had this discussion, but basically what this regulation does is, it adjusts for changes over which we have no control. We just have to make sure that we are in compliance with other rules and regulations. Is there a motion for approval?"

Dr. Meredith Rosenthal moved approval of the regulation. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the Request for Approval to Promulgate New Regulation 105 CMR 129.000, Health Insurance Open Enrollment Waivers. A copy of staff's memorandum to the Council dated February 9, 2011 and a copy of the approved regulations is attached and made a part of this record as Exhibit No. 14,971.

FOLLOW-UP ACTION STEPS:

- Invite MetroWest Medical Center to return to the Council in a year for an update on their new Palliative Care Service (Lanzikos to Campbell)
- Memberships on Wellness Committees should include community representatives from the local health department and local hospital (Caulton-Harris to Sheetz, Goodenow)
- Regulatory Language should be specific and include racial, ethnic and community representation on the Wellness Committees and outreach to the ethnic press (Rivera, David to Sheetz, Goodenow)

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

- Docket of the meeting
- Copy of the meeting notices to A&F and Secretary of the Commonwealth
- Draft minutes of the PHC meetings of January 24, 2011 and February 9, 2011
- Excerpts from the MetroWest Medical Center/Vanguard Health Systems application for the 2010 Betsy Lehman Patient Safety Recognition Award
- Informational briefing memorandum and proposed draft Regulations on 105 CMR 225.000: Proposed Regulations Governing Nutrition Standards for Competitive Foods in Schools
- Informational briefing memorandum and proposed draft Regulations on 105 CMR 215.000: Proposed draft Regulations Establishing Standards for School Wellness Advisory Committees
- Determination of Need (DoN) compliance memorandum to the Council on Previously Approved Project No. 1-3B36 of Baystate Medical Center, Inc.
- Staff Memorandum and copy of new Regulation 105 CMR 129.000: Health Insurance Open Enrollment Waivers

The meeting adjourned at 11:20 a.m.

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Chair Auerbach

LMH