MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of January 10, 2024

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, January 10, 2024 – 9:00AM**

***Note: The January 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:

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Passcode: 023183

1. **ROUTINE ITEMS**
   1. Introductions.
   2. Updates from Commissioner Robert Goldstein.
   3. Record of the Public Health Council Meeting held December 13, 2023 **(Vote)**.
2. **DETERMINATION OF NEED**
   1. Request by Encompass Health Corporation for a Substantial Capital Expenditure **(Vote).**
3. **REGULATIONS**
   1. Request to promulgate final amendments to 105 CMR 700.000, *Implementation of MGL c.94C* **(Vote).**
4. **INFORMATIONAL PRESENTATIONS**
   1. Massachusetts Health System Capacity – Current State.
   2. Modernization of Hospital Occupancy Data Collection.

*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: January 10, 2024 - Start Time: 9:05am. Ending Time: 11:32 am.

| **Board Member** | **Attended** | **First Order:**  **Approval of December 13, 2023 Minutes (Vote)** | **Second Order:**  **Request by Encompass Health Corp. for a Substantial Capital Expenditure**  **(Vote)** | **Third Order:**  **Request to Promulgate Final Amendments to 105 CMR 700.000**  **(Vote)** |
| --- | --- | --- | --- | --- |
| **Commissioner Robert Goldstein** | Yes | Yes | Yes | Yes |
| **Edward Bernstein** | Yes | Yes | Yes | Yes |
| **Lissette Blondet** | No | Absent | Absent | Absent |
| **Kathleen Carey** | Yes | Yes | Yes | Yes |
| **Elizabeth Chen** | Yes | Abstain | Yes | Yes |
| **Harold Cox** | Yes | Yes | Yes | Yes |
| **Alba Cruz-Davis** | Yes | Yes | Yes | Yes |
| **Michele David** | No | Absent | Absent | Absent |
| **Robert Engell** | Yes | Yes | Yes | Yes |
| **Elizabeth Evans** | Yes | Yes | Yes | Yes |
| **Eduardo Haddad** | Yes | Yes | Yes | Yes |
| **Joanna Lambert** | Yes | Yes | Yes | Yes |
| **Stewart Landers** | Yes | Yes | Yes | Yes |
| **Mary Moscato** | Yes | Yes | Yes | Yes |
| **Gregory Volturo** | Yes | Yes | Yes | Yes |
| **Summary** | 13 Members Present;  2 Members Absent | 12 Members Approved;  2 Members Absent  1 Member Abstained | 13 Members Approved  2 Members Absent | 13 Members Approved  2 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, January 10, 2024, by the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts 02108.

Members present were: Commissioner Robert Goldstein; Edward Bernstein, MD; Kathleen Carey; Secretary Elizabeth Chen; 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.

Elizabeth Evans left the meeting at 11:30 am.

Commissioner Goldstein called the meeting to order at 9:05 am and made opening remarks before reviewing the docket.

**1. ROUTINE ITEMS**

*b. Updates from Commissioner Robert Goldstein*

Commissioner Goldstein proceeded to update the council on the following:

**Martin Luther King, Jr. Day**

Commissioner Goldstein recognized the upcoming Martin Luther King, Jr holiday which honors the life and work of this civil rights leader. It has become a National Day of Service, and encourages us to volunteer in our communities. As an example, he will participate at a vaccination clinic in Worcester at the Latino Health Insurance Program, part of the Vaccine Equity Initiative.

**Anti-Abortion Centers**

Commissioner Goldstein warned of practices at anti-abortion clinics, or what were known as crisis pregnancy centers or “CPCs” and the concern of DPH has regarding these centers. He said they do not provide comprehensive reproductive health care and often don’t share complete information such as abortion options to those seeking their services. He said anti-abortion clinics outnumber abortion providers three to one in the Commonwealth, with the majority of them not licensed by the Department of Public Health. DPH has set of materials to educate people in the Commonwealth about the dangers of anti-abortion centers, including licensure guidance and a public communications strategy.

**Update on Emergency Assistance**

Commissioner Goldstein provided an update DPHs work supporting the emergency assistance program. The Department operationalized weekly vaccination clinics at two Family Welcome Centers where families experiencing homelessness are connected to essential services and shelter. Also, the Department is facilitating training for the Massachusetts National Guard personnel assigned to supporting the EA shelter mission.

**Respiratory Illness Season**

Commissioner Goldstein reminded us that we are still in a critical time in this respiratory illness season. Although the Department does not know how severe the peak of the respiratory illness season will be, we can all take steps to mitigate our risk. He encouraged everyone to get their vaccines as soon as possible against COVID-19, flu, and RSV.

**Key Indicators**

Commissioner Goldstein pointed out that two informational presentations scheduled for the meeting will focus on healthcare capacity. One is focused on historical trends across all healthcare and the other is about innovation for the future. To provide context, he said that as of 1/6/2024, Massachusetts med/surg beds were at 93% occupancy and intensive care units were close to capacity at 85%. Among admissions where COVID-19 was present, 35% were primarily due to COVID-19. When hospital occupancy reaches these levels, it’s important to prevent unnecessary stays and to transition patients to an appropriate setting. A memo issued this week by Secretary Walsh directs insurers to waive prior authorization requirements prior to admissions from other facilities, for nursing homes to extend hours to accept admissions, and hospitals to expedite discharge planning and care coordination.

**EHS Strategic Planning Network**

Commissioner Goldstein spoke about the ongoing efforts to improve the efficiency, coordination, and outcomes of the Department of Public Health. DPH has developed a new three-year strategy map which involves fine-tuning our vision, mission, and priorities based on a strategic planning process initiated by the Executive Office of Health and Human Services. It will include the Department’s updated vision for an equitable and just public health system, and its updated mission to promote and protect health and wellness for all people. The strategy map will center on those systematically and culturally oppressed identities and circumstances, while prioritizing racial equity by improving access to those communities most impacted by health inequalities and structural racism.

**Commissioner’s Strategic Priorities**

Commissioner Goldstein highlighted the five strategic priorities of DPH as outlined in the strategy map. They are:

* Heath equity, centering racial equality
* Emergency preparedness and response
* A strong public health workforce
* Modernized public health infrastructure
* Enhanced public service

He said he looked forward to working with all DPH, the Council, and all partners throughout the Commonwealth to make progress on these priorities.

Commissioner Goldstein asked if there were any questions.

With no questions, Commissioner Goldstein turned to the docket.

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

*c. December 13, 2023 Minutes* ***(Vote)***

Commissioner Goldstein asked if there were any changes to the December 13, 2023, minutes. There were none.

Commissioner Goldstein asked if there was a motion to approve the December 13, 2023, minutes.

Dr. Cruz-Davis made the motion, which was seconded by Mr. Landers. Secretary Chen abstained. All other present members voted to approve the minutes.

**2. DETERMINATION OF NEED**

1. *Request by Encompass Health Corporation for a Substantial Capital Expenditure* ***(Vote)****:*

Commissioner Goldstein invited Dennis Renaud, Director of the Determination of Need Program, to review the staff recommendation for Encompass Health Corporation’s request for a substantial capital expenditure. 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, Commissioner Goldstein asked the members if there were any questions.

Ms. Moscato said that the proposal states there are four other Encompass facilities, but she said Hampden County has other Rehabilitation In-patient Facility (RIF) beds in Springfield and Westfield, and asked if there was a review considering these other beds.

John Hunt, CEO of Encompass Rehabilitation Hospital Western Massachusetts, said that one of the RIFs is a 15 bed unit inside a hospital and the other is a 30 bed RIF attached to Mercy Hospital in Springfield. He believes that Encompass runs its facility more efficiently from a patient access standpoint with better clinical outcomes and is the only facility in Western Mass that has private rooms.

Ms. Moscato confirmed that there are 40 more beds in Hampden County with RIF availability. She then asked if when the facility was built with 53 beds, was the intention for future growth?

Mr. Hunt confirmed and said they planned space for 17 additional beds.

Ms. Moscato stated that their projected occupancy will be roughly 58 beds and asked, if the additional 17 beds was based on space availability, or the needs of the local communities.

Mr. Hunt said the 17 beds were identified based on availability in the original hospital plan, but it does look at the number of aging patients in their community. Also, a cost perspective was considered and building out all 17 beds at one time was cost effective. Another consideration was the dialysis population. In the past they were able to transport their patients out of their hospital to a dialysis center three times a week. During the COVID pandemic however, transportation became difficult, and they were unable to assure transportation for these patients. In an effort to improve this situation, they have completed building a dialysis suite providing access for rehab patients that require dialysis.

Ms. Moscato then asked about the added workforce and where it will be pulled from.

Mr. Hunt said they are planning on adding 9.8 full time direct care givers, RNs, CNAs, and therapists. They utilize several methods currently in place to fill these positions, including through relationships with the local colleges.

Dr. Carey appreciated the application and the importance of more rehab beds. She mentioned the high occupancy rates noted in the application and asked if they were staffed beds. She said 78% of the payer mix is Medicare and the highest single condition treated is total joint replacements, which she said concerns Medicare.

Mr. Landers asked about cost containment. He said he understood the proposal to read that Medicare reimburses at a lower amount for similar patient acuity, implying that the size of the organization and its facilities lead to efficiencies in care. He asked if that was the major contribution, or if there were other differences, like length of stay or other areas where they seek to contain cost.

Mr. Hunt agreed that was the primary reason, but secondly, they manage their length of stay better. From a cost containment perspective, they are striving to help acute care hospitals, their major referral sources, manage their length of stay better through better access to their facilities.

Mr. Landers wondered if there were any patient satisfaction polls being done across RIFs to see differences in the models of service delivery.

Mr. Hunt said they do patient satisfaction polling through a third party vendor and the satisfaction rates tend to be very high.

Mr. Engell was interested in long-term success for the patient following discharge from their facility. He did not see in the proposal the examples of the coordination for outpatient therapy and functional status evaluation long-term post discharge of patients from their facility.

Mr. Hunt said each patient is assigned their own case manager who serves as a conduit between hospital staff, the therapy team, physicians, and the patient and their families. They look at what the patient’s needs are going to be upon discharge, and appropriate services are put in place along with follow-up.

Dr. Haddad asked if dialysis is performed at their site, or does the patient have to be transported.

Mr. Hunt reiterated his comments on the difficulty of transportation during COVID and their ability to take in dialysis/rehab patients. He mentioned that they have just completed building a state-of-the-art dialysis unit at the hospital.

Dr. Bernstein asked about the data concerning national studies of mortality, readmission, and ED visits. He asked if their facility had current data regarding this and do they intend to collect it with the new facility.

Mr. Hunt said he cannot speak to the mortality rates specifically, but they currently discharge about 85% of their patients to home, about 7.6% go to a nursing facility for follow-up and about 7.7% come back to acute due to complications they may experience. He said that they intend to continue to collect data with the newer facility also.

Dr. Bernstein asked about the impact of COVID and respiratory illness and how they plan to mitigate it for staff as well as patients.

Mr. Hunt said they have done a very good job of mitigating COVID and respiratory illness for staff, patients and visitors by following specific protection guidelines. They have reinstated visitor masking policies. He said because their rooms are private with private bathrooms, this has helped the spread of infection along with the clean air from a newer building.

Dr. Bernstein asked if there was a vaccination rate for staff.

Mr. Hunt said it was around 92%.

With no further questions, Commissioner Goldstein asked if there was a motion to approve the request by Encompass Health Corporation’s request for a substantial capital expenditure.

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

1. **REGULATIONS**
2. *Request to Promulgate Final Amendments to 105 CMR 700.000, Implementation of MGL c.94C* ***(Vote)***

Commissioner Goldstein invited Lauren Nelson, Deputy Director for the Bureau of Health Professions Licensure, to present a request to promulgate final amendments to the Department’s regulations regarding implementation of the Controlled Substance Act.

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

Mr. Landers wanted clarification about the self-assessment tool in the comment table.

Ms. Nelson said in the guidance they sent out in November, there was a link to a commonly used risk self-assessment to guide pharmacists with their patients.

Mr. Landers then confirmed that the patient takes the self-assessment to help with decision of contraceptive choice.

Ms. Nelson said that was correct.

With no further questions, Commissioner Goldstein asked if there was a motion to promulgate final amendments to 105 CMR 700.00, Implementation of MGL c.94C.

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

1. **INFORMATIONAL PRESENTATION**
2. *Massachusetts Health System Capacity – Current State*

Commissioner Goldstein invited Dr. Katherine Fillo, Deputy Bureau Director for Clinical and Health Care Systems Quality, to introduce an informational presentation on Massachusetts health system capacity. Joining her was Chiara Moore, Supervisory Health System Epidemiologist.

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

Dr. Volturo emphasized the impact on patients due to boarder wait times and extreme capacity. He asked if the definition of ED boarder time begins with the time the patient arrives in the ED, or the time that they have been admitted. He understands that it begins two hours after decision to admit, meaning that the patient potentially could have been boarded in the ED for six hours before the clock starts. He then asked if emergency air flights were part of inter-facility transfers because he has seen a rise in these numbers but attributes it to capacity and need to move patients. He recommended to re-establish the patient flow and boarding task force.

Dr. Fillo responded that the definition of boarding is once the disposition decision has been done and air ambulance is required to report mass ambulance trip record system, so it is included as transfers.

Commissioner Goldstein mentioned that there are certain areas in the state that affirm Dr. Volturo’s concern about capacity and boarding hours, but this does not apply to the entire state.

Dr. Volturo agreed and said it is the academic medical centers that are at such high levels. He said also due to facility closures, there is a loss of over 700 beds.

Ms. Moscato was encouraged by the centralized data collection system and hoped the hospital at home programs would also be collected in this data. She asked about the 25% of nursing home patients going back after a short stay and suggested the data be more specific. She warned of proposed nursing home regulations changing nursing staffing ratios, creating a staffing challenge in the nursing home industry.

Dr. Fillo said they would look at the readmission within short stays to identify trends.

Dr. Carey said that the increase in the number of reporting urgent care facilities is only up by about one in four and asked what cost effective incentives there are to gain more reporting from these facilities.

Ms. Moore said the urgent care facilities are not required to report. They must onboard them by using the facility’s electronic health record system, which works well for some systems, but not all.

Mr. Engell emphasized workforce development and the need to have sufficient pipelines throughout the Commonwealth.

Dr. Fillo agreed that there is much engagement throughout the Secretariat and across the administration to grow the workforce.

Dr. Bernstein asked what would initiate a more drastic response to address the capacity numbers and boarding times discussed by Dr. Volturo in areas like academic health settings. He raised measures that were taken by the state during the pandemic.

Dr. Fillo explained the state tier system was put in place early during the pandemic, which triggers steps that the state will take. Hospitals are expected to have an emergency plan in place for when they are over-capacity, including working with other hospitals to find room and there is a process to reach out to the Department for support.

Dr. Bernstein said that examining the drivers of good health, including access to primary and specialty care and having safe environment, and investments in these “upstream” drivers will help alleviate the capacity crisis before it happens. He also said that health equity is at the heart of all of this.

Commissioner Goldstein said that many parts of the Department are invested in and focused on the factors mentioned by Dr. Bernstein, attempting to prevent people from having to come into the healthcare system.

Ms. Lambert asked about the plan to increase licensure to urgent care centers and if it would become mandatory and if not, as Dr. Carey asked, what incentives are there to get the centers to report their data, or to voluntarily license themselves.

Commissioner Goldstein answered that in a recent report released on essential services, one of the recommendations made was about licensure and regulations of urgent care clinics. He felt licensing is important to provide care for all residents at affordable costs and would provide data from across the state to the Department.

Dr. Haddad said that when a patient is sent back from a tertiary center to where they came from, this generally means to a community hospital, and there would be no reimbursement left at this point. He asked how this can be overcome.

Dr. Fillo said this is an essential question in need of a solution as they promote sending patients back to a community hospital.

With no further questions, Commissioner Goldstein moved to the next presentation.

**4. INFORMATIONAL PRESENTATION**

1. *Modernization of Hospital Occupancy Data Collection*

Commissioner Goldstein invited Kerin Milesky, Director of the Office of Preparedness and Emergency Management, to share an informational presentation on the modernization of hospital occupancy data collection.

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

Dr. Volturo commented that this capacity data system is how hospitals will begin to collaborate instead of compete.

Ms. Milesky said that Massachusetts is currently one of three states funded for this work.

Secretary Chen asked how this applies to capacity in nursing homes.

Ms. Milesky said that in the future if there was any expansion in this technology, it would be done in collaboration with our partners. She said they are using a very small piece of this GE technology right now and there is great potential for expansion, but at this point it is focused on hospitals.

Mr. Engell asked how they are contemplating inclusion of the EMS system for triage and pre-hospitalization based on this kind of information.

Ms. Milesky said that initially the goal is to get up and running with the specific data set based on COVID-19 federally-acquired data use case, but the technology has great potential for them to determine where it can be utilized elsewhere.

Dean Cox said this work reminded him of the challenge years ago they had to bring all the communities together to institute the epidemiologic system, MAVEN. He asked what was learned from the institution of MAVEN that can be applied today to ACORN.

Ms. Milesky said that this work is not limited to only the Office of Preparedness and Emergency Management, but she is also working with her colleagues in the Bureau of Infectious Disease and Laboratory Sciences, where MAVEN sits, as well as her colleagues in the Bureau of Healthcare Safety and Quality, creating an internal team that is doing this work and looking at the lessons learned from past implementation of other systems.

Dr. Bernstein asked if we will be the first state to implement this and if so, what can we learn about the facilitators and barriers of implementation.

Ms. Milesky said Oregon and Hawaii also have been funded to bring this project on-line. She said Massachusetts is the only state to include all the COVID-19 data reporting rather than just hospital capacity reporting.

Dr. Bernstein said the implementation can be likened to the “carrot and the stick”, but after the pilot implementation is successful, why couldn’t we require that DoN applicants implement this system.

Commissioner Goldstein said he hoped that people would see the benefit of making these data transparently available. If we feel that this is a successful and useful way to collect data, then there are levers through the regulatory and legislative system that we can employ. He said there is tremendous benefit and feels most healthcare systems will see this real-time transparency which will provide cost savings, and the larger systems will receive fewer calls because occupancy can be seen through this system.

Mr. Landers said he hoped there is an equity lens applied to this.

Commissioner Goldstein said that the 100 required reporting data elements from CMS do include race, ethnicity, demographics like language spoken, and age. He said we will be able to see those same data fields that we currently see with the hope that this will result in a higher fidelity of the data.

Mr. Landers said collecting gender and sexual orientation information is more controversial, but he suggests that fields for this data be included, whether it is a requirement to do so or not, rather than choose later to include it only to find it cannot be until there is a new system upgrade.

Commissioner Goldstein agreed and mentioned that this information may currently be included in CMS’ system, but may not be mandated as it is not accepted by all systems receiving the data.

Dr. Cruz-Davis hopes that there will continue to be a focus on rural communities and communities of color, as well as income, that would benefit from this new system of data collection.

Commissioner Goldstein agreed and emphasized the importance of bringing on board all 72 acute care hospitals for this data collection to represent the state’s diversity.

Ms. Moscato said she was pleased that the data collection included both acute and non-acute settings. She said the DoN process has approved additional beds for both acute and non-acute and she was pleased for the opportunity of more non-acute hospitals to sign on, mentioning their importance in data collection.

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, February 14, 2024, at 9 AM.

Commissioner Goldstein asked if there was a motion to adjourn.

Dr. Bernstein made the motion which was seconded by Secretary Chen. All present members approved.

The meeting was adjourned at 11:32 am.