**APPROVED** MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of March 11, 2020

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH COUNCIL

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

250 Washington Street, Boston MA

Docket: Wednesday, March 11, 2020 - 9:00 AM

1. **ROUTINE ITEMS**
   1. Introductions
   2. Updates from Commissioner Monica Bharel, MD, MPH.
   3. Record of the Public Health Council meeting held February 12, 2020. **(Vote)**
2. **NONROUTINE ITEMS** 
   1. Request for approval of the Public Health Council for the Commissioner to address the public health issue of COVID-19 in the Commonwealth.  **(Vote)**
3. **DETERMINATIONS OF NEED**
4. Request by AmSurg BMC, LLC to acquire ownership interest in Pioneer Valley Surgicenter, LLC. **(Vote)**
5. Request by Partners HealthCare System, Inc. for substantial capital expenditure at Newton Wellesley Hospital. **(Vote)**
6. **PRELIMINARY REGULATIONS**

a. Informational overview of proposed amendments to 105 CMR 665.000, *Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems*.

*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

Attendance and Summary of Votes:

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

Date of Meeting: March 11, 2020

Start Time: 9:16AM Ending Time: 10:38 AM

| Board Member | Attended | First Order: Approval of February 12, 2020 Meeting Minutes (Vote) | Second Order: **Authorization for DPH Commissioner to take necessary actions during COVID-19 Public Health Emergency** (Vote) | Third Order: Delegate Department’s Isolation and Quarantine Authority to DPH Commissioner or Designee (Vote) | Fourth Order:  AmSurg BMC, LLC Request to Acquire Ownership Interest in Pioneer Valley Surgicenter, LLC. (Vote) | Fifth Order:  Partners HeatlhCare System, Inc. Request for Substantial Capital Expenditure at Newton Wellesley Hospital |
| --- | --- | --- | --- | --- | --- | --- |
| Commissioner Monica Bharel | Yes | Yes | Yes | Yes | Yes | Yes |
| Edward Bernstein | Yes | Yes | Yes | Yes | Yes | Yes |
| Lissette Blondet | Absent | Absent | Absent | Absent | Absent | Absent |
| Derek Brindisi | Yes | Yes | Yes | Yes | Yes | Yes |
| Kathleen Carey | Yes | Yes | Yes | Yes | Yes | Yes |
| Sec. Elizabeth Chen | Yes | Yes | Yes | Yes | Yes | Yes |
| Harold Cox | Yes | Yes | Yes | Yes | Yes | Yes |
| John Cunningham | Yes | Yes | Yes | Yes | Yes | Yes |
| Michele David | Absent | Absent | Absent | Absent | Absent | Absent |
| Michael Kneeland | Yes | Yes | Yes | Yes | Recused | Yes |
| Keith Hovan | Yes | Yes | Yes | Yes | Yes | Yes |
| Joanna Lambert | Yes | Yes | Yes | Yes | Yes | Yes |
| Lucilia Prates-Ramos | Yes | Yes | Yes | Yes | Yes | Yes |
| Sec.Francisco Ureña | Yes | Yes | Yes | Yes | Yes | Yes |
| Summary | 12 members present, 2 members absent | 12 members approved, 2 members absent | 12 members approved, 2 members absent | 12 members approved, 2 members absent | 11 members approved, 1 member recused, 2 members absent | 12 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, March 11, 2020 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: Edward Bernstein, MD; Monica Bharel, MD, MPH; Derek Brindisi; Kathleen Carey, PhD; Secretary Elizabeth Chen, PhD, MPH, MBA; Harold Cox; John Cunningham, PhD; Michael Kneeland, MD; Keith Hovan; Joanna Lambert; Lucilia Prates-Ramos, and Secretary Francisco Ureña.

Absent members were: Lissette Blondet and Michelle David, MD.

Also in attendance was Margret Cooke, General Counsel at the Massachusetts Department of Public Health.

Commissioner Bharel called the meeting to order at 9:16AM and made opening remarks before reviewing the agenda.

1. ROUTINE ITEMS

b. Updates from Commissioner Monica Bharel, MD, MPH

Commissioner Bharel stated before the Council reviews and votes on minutes from the February Public Health Council meeting, she wanted to share a few highlights regarding recent public health work taking place at the Department and across the state.

*Coronavirus*

Commissioner Bharel stated she wanted to start by giving the Council a brief update on the current status of COVID-19. The situation as you all know has been rapidly evolving. We are in contact with the CDC multiple times a day and we are working to keep all of our partners, including local boards of health, schools, colleges and universities, health care partners and others, as updated as we can. She noted that as of March 10th, there were a total of 92 cases in Massachusetts, with 1 confirmed and 91 presumptive positive. She reminded the Council that all presumptive positive cases are sent to the CDC for confirmatory testing but Massachusetts begins acting on these cases right away.

She informed the Council that case information is now updated and posted to the state’s website daily, and that the website still serves as the best source for the most recent guidance and information.

She indicated on March 10th, Governor Baker declared a State of Emergency in order to further address this evolving outbreak and as part of the state’s deliberate, proactive steps to slow the spread of COVID 19.

Commissioner Bharel then noted Massachusetts is beginning to see person to person spread of the virus in the community among individuals without identifiable risk factors, and based on that the public health approach shifts to mitigation to reduce the impact. She noted such transmission has been seen in Berkshire County, and that the Department is assisting them with surveillance and testing among health care workers and patients.

The Commissioner noted that we will continue our work in testing, surveillance, contract tracings, education, collaboration with our multiple stakeholders and preparing for this ongoing outbreak and concluded the COVID-19 update with a reminder that prevention remains the best defense and advocated for personal protective measures such as washing your hands well, covering your cough or sneeze, and staying home if you feel sick.

*Budget Testimony*

Commissioner Bharel then gave the members an overview on her recent budget testimony in front of Joint Ways and Means Committee where she highlight many areas the Department focused over the past year including EEE, vaping, the opioid epidemic and the COVID-19 response. She reminded the Committee about DPH’s expansive work focused on precision public health; using data to highlight the social determinants of health and highlight health disparities and eliminate health inequities and summarized some of the Department’s key requests in the Governor’s budget, including vital records modernization, PFAS screening enhancements and state public health investments. She indicated she would provide the members with a copy of her testimony.

The Commissioner then opened the meeting to questions from Council members regarding her updates.

Dr. Bernstein asked about exposure of health workers in our state; and what the plans for testing and preventing the spread of COVID in that population.

Commissioner Bharel stated that the personal protective equipment is being communicated across the Health and Homeland Alert Network with a large group including health workers and are keeping in accordance with CDC for the use of face masks and N95 masks are used as appropriate. We are also increasing the capacity to gain more supplies and recently made a request from the federal stockpile. For testing, we received federal permission to increase the number of tests and the supplies are coming from the CDC and we are expecting 2000 tests coming in the next few days. Other labs in the state will also have the capacity to test. We are following CDC guidelines for who will be tested and how that is being determined, and are prioritizing exposed healthcare workers and their patients. CDC has approved testing individuals with symptoms, and not asymptomatic.

Mr. Brindisi asked about guidance to municipalities for continuity of service and how to access PPE and things like sanitizers.

Commissioner Bharel stated local boards of health and municipalities are key partners for following up at the community level, and indicated the Department will keep local boards of health informed regarding personal protective equipment.

Mr. Brindisi asked about communication with emergency personnel.

Commissioner Bharel state DPH is in close contact with emergency medical personnel and first responders through the Health and Homeland Alert Network and other outlets and are emphasizing preparedness and contingency planning.

Dr. Bernstein asked if this allows the Commonwealth to have the ability to increase testing capacity.

Commissioner Bharel stated that DPH already has the capacity to access testing with restrictions at the state level.

Dr. Bernstein expressed concern about the lack of preparedness and disruption of the workforce.

Commissioner Bharel stated that DPH’s goal is to get individuals the information they need and to do everything we can to enhance testing. Our lab has approval for accelerating progress as we quadruple our testing ability. DPH is also working on preparedness for what might come to obtain the tools we might need as quickly as possible.

Mr. Brindisi asked about providing guidance to local boards of health.

1. ROUTINE ITEMS

c. Record of the Public Health Council February 12, 2020 Meeting (Vote).

Commissioner Bharel asked if any members have any changes to be included in February 2020 meeting minutes.

Hearing none, Commissioner Bharel then asked for a motion to accept the minutes. Dr. Cunningham made the motion, which was seconded by Secretary Chen. All other present members approved.

2. NONROUTINE ITEMS

1. Request for approval of the Public Health Council for the Commissioner to address the public health issue of COVID-19 in the Commonwealth. (Vote)

Commissioner Bharel then requested the Council members approve that she be able, during the period of emergency, be able to take actions, incur liabilities, and establish rules, requirements, and procedures necessary to prepare for, respond to, and mitigate the spread of COVID-19 to protect Massachusetts residents consistent with the Governor’s emergency declaration and to ensure we are able to rapidly respond as necessary. She then asked if the Council members had questions.

At 9:33 am, Secretary Ureña arrives.

Dr. Bernstein asked if this would allow the state to assess our testing capacity and mobilize to increase the testing capacity in the state.

Commissioner Bharel responded that with the Governor’s declaration we have the ability to do that currently, and limitations on testing capacity are related to federal restrictions at this time. She added that as additional labs are able to come on line, there are no restrictions at the state level.

Dr. Bernstein then added that there is not enough capacity at the federal level to support testing needs of states and local communities and to support health care workers in their efforts.

Commissioner Bharel indicated she understands the anxiety around this new, evolving disease and that the Department’s job is to do all it can to respond to COVID-19 and ensure information is communicated across the state. She added that one part of that process was the state lab’s development of their own test. She distinguished the state of emergency from the Department’s existing capacity to respond by noting this request is necessary to ensure we are proactive and able to respond.

Mr. Brindisi requested that during the weekly calls with local boards of health that they be given an overview of what isolation and quarantine means for local boards of health and what their authorities are.

Commissioner Bharel noted there was a call with local boards of health later today and part of the agenda will discuss isolation and quarantine specifically, as well as some additional guidance to local boards of health on this topic.

Seeing no further questions, Commissioner Bharel then asked if there was a motion to approve the request that she be able, during the period of emergency, be able to take actions, incur liabilities, and establish rules, requirements, and procedures necessary to prepare for, respond to, and mitigate the spread of COVID-19 to protect Massachusetts residents consistent with the Governor’s emergency declaration.

Dr. Kneeland made the motion, which was seconded by Dr. Cunningham. All members present approved.

The Commissioner then invited Lynn Squillace, Deputy General Counsel for the Department to review a request that the Department’s isolation and quarantining authority, as set forth in Department regulation 105 CMR 300.000, be delegated to the Commissioner.

Ms. Squillace then provided an overview of the Department’s and local boards of health’s authority relative to isolation and quarantine. She noted regulation 105 CMR 300.000 authorizes the Department to isolate and quarantine individuals, and indicated delegating this to the Commissioner would allow timely ordering of isolation and quarantine for noncompliant individuals.

Dean Cox asked to clarify the isolation and quarantine request here, as related to the request for the Commissioner to take actions during the pendency of the emergency.

Ms. Squillace stated that isolation is for individuals are ill while quarantine is individuals that are not ill. Voluntary compliance is requested, but if this is not achieved this request would allow the Commissioner to require isolation and quarantine.

Dean Cox indicated the last vote gave the Commissioner broad authority to take necessary actions, and wanted to understand the need for this request.

Ms. Squillace indicated the action the Council just took could include allowing the Commissioner to isolate and quarantine, but given there is a specific procedure in Department regulation, the request to delegate the isolation and quarantining function to the Commissioner clarifies the procedure.

Ms. Cooke added that the request related to isolation and quarantine makes it very clear for the record that this authorization was being given to the Commissioner.

Dean Cox asked for clarification on the authority given to Commissioner Bharel through the Council’s last action.

Margret Cooke stated that the authority just given to Commissioner Bharel under the public health emergency is a broad authority. She added that given the specific authority for isolation and quarantine is already in DPH regulation, this clarifies the authority to issue an isolation or quarantine order. She added that the authority under the public health emergency is for those things we cannot anticipate and are unknown in a constantly changing environment, whereas there is existing authority and an existing procedure for isolation and quarantine in DPH regulation.

Commissioner Bharel added that the authority under the public health emergency is for those things that are unknown, whereas authority for isolation and quarantine exists at the Department in regulation so this action clarifies the specific authority for a specific function.

Dr. Bernstein asked about how the information is being communicated to Massachusetts residents, and what system is available to get information out across the entire state.

Commissioner Bharel stated there are many ways we are trying to broadly communicate information related to COVID-19, including media events such as Governor Baker announcing a state of emergency and subsequent Department and PHC actions related to the emergency. She highlighted statewide coordination with the Department of Transportation for messaging as an example, which all directs individuals to our [mass.gov](http://mass.gov) website. Commissioner Bharel also noted continued conversations with colleges and universities, healthcare system representatives, school systems, and local boards of health. She added that we all must share this information to ensure we are all prepared and informed, and to counter misinformation.

Dr. Bernstein suggested engaging trusted members of the community to further communicate these sources of information.

Ms. Prates-Ramos reiterated the mistrust some individuals have and supported Dr. Bernstein’s suggestions. She added she recently received a robocall from a local elected official as an information source, and suggested that may be an option and could potentially be offered in various languages.

Seeing no further questions, Commissioner Bharel asked if there was a motion to delegate the Department’s isolation and quarantine authority in 105 CMR 300.000 to the Commissioner or her designee.

Secretary Ureña made the motion, which was seconded by Dr. Cunningham. All members present approved the request.

1. **DETERMINATIONS OF NEED**
2. Request by AmSurg BMC, LLC to acquire ownership interest in Pioneer Valley Surgicenter, LLC. **(Vote)**

Commissioner Bharel invited Elizabeth Kelley, Director of the Bureau of the Health Care Safety & Quality, and Rebecca Rodman, Deputy General Counsel, to review the DoN staff summary for the request by AmSurg BMC, LLC to acquire ownership interest in Pioneer Valley Surgicenter, LLC. Partners HealthCare’s Systems requested for substantial capital expenditure at Newton Wellesley Hospital.

Before Ms. Kelley’s presentation, Dr. Kneeland exited the Council room as he recused himself from this application.

Upon conclusion of Ms. Kelley’s presentation, the Commissioner asked if the members had questions for Ms. Kelley or the Applicant.

Seeing none, Commissioner Bharel asked if there was a motion to accept the staff recommendation to approve this determination of need application. Dean Cox made the motion, which was seconded by Dr. Bernstein. All present members approved.

1. **DETERMINATIONS OF NEED**

b. Request by Partners HealthCare System, Inc. for substantial capital expenditure at Newton Wellesley Hospital. **(Vote)**

Dr. Kneeland returned to the Council room at 10:05 AM.

Ms. Kelley presented the staff recommendation for Partners HealthCare System, Inc.’s request for substantial capital expenditure at Newton Wellesley Hospital.

Upon the conclusion of Ms. Kelley’s presentation, Commissioner Bharel asked if the Council members had questions for Ms. Kelley or representatives of the Applicant.

Dean Cox asked for additional explanation of the cost containment factor.

Ms. Kelley indicated an area of focus across the entire project is keeping patients in the community and avoid transfer to academic medical centers unless necessary.

Gregg Meyer, Interim President for Newton Wellesley Hospital then came to the table to address the Council. He reiterated the impetus for the project was to keep patients in the community and to enable community hospitals to accept patients being discharged from downtown hospitals when appropriate.

Mr. Brindisi asked about Factor Six and the allocation of funds for DoN health priorities and wanted to understand if these were the same as Community Health Priorities.

Department staff responded these were one in the same.

Mr. Brindisi then asked the Applicant to describe their community engagement process and how municipal agents were engaged.

Ellen Moloney, Chief Operating Officer at Newton Wellesley Hospital, responded that the Hospital has a very specific process that involves all communities served and key groups.

Lauren Lele, Director of Community Benefits and Volunteer Services at Newton Wellesley Hospital then added that the Hospital recently completed another CHI process for another project and will be using lessons learned from that process. She added that the Hospital is looking to the community served for upstream strategies to use to address health priorities, as well as feedback through the community engagement process.

Mr. Brindisi asked if the Hospital engaged in a community health improvement planning process with the community.

Ms. Lele responded the Hospital has, in response to a 2018 needs assessment and subsequent health implementation plan that was approved by the community benefits committee at the Hospital which was presented to municipal groups including local boards of health, which the Hospital meets with on a quarterly basis.

Secretary Chen asked about surprise billing as it relates to observation stays.

Ms. Moloney responded that case managers are assigned to each patient to ensure clarity and planning with regard to insurance and each patient. She added that employed physicians must be enrolled in all Partners contracted payers.

Dr. Meyer reiterated Ms. Moloney’s point.

Secretary Chen emphasized rules around days you must be inpatient before being discharged to a skilled nursing facility.

Ms. Moloney indicated case managers meet twice daily and do rounds on patients to understand projected stay and if there needs to be a conversion to admission, the staff are clear with a patient around that.

Ms. Prates-Ramos indicated anyone who does not meet the 3-midnight rule would not be charged for skilled nursing care and asked if that was the Hospital’s understanding.

Vincent McDermott, Chief Financial Officer for the Hospital, responded that inpatients that are classified as inpatient or observation would follow standard leveling of care for the correct status of their stay so it is clinically appropriate and confirmed they are not providing skilled nursing care in the hospital.

Ms. Prates-Ramos indicated that anyone on original Medicare must meet a 3-midnight rule so they are not charged for skilled nursing care at discharge. She indicated she sees this frequently, where patients are discharged to a skilled nursing facility and are charged for skilled nursing care due to the observation stay at the hospital. She added that anyone as observation should be observation for 48 hours only and would hope that they patient would be admitted thereafter with retroactive classification.

Dr. Bernstein asked if that could be included as a tracking point, to track how many over age 65 are admitted as an observation stay and if then subsequently admitted to the hospital the portion that do not meet the 3-midnight rule.

Ms. Rodman indicated that there is some tracking around that currently.

Crystal Bloom, regulatory attorney to the Hospital, indicated that the rules the Hospital faces with respect to classification criteria are not necessarily discretionary. She indicated the observation unit has patient benefits, such as moving them out of the emergency department more quickly. She concluded by saying the financial considerations raised are not the Hospital’s and are due to Medicare payment rules.

Secretary Chen requested clarification.

Ms. Bloom responded that when a patient comes in, the physician must decide if the patient will qualify as an inpatient within 48 hours and if they do not believe the patient will, they must document the level of care needed in the record so they do not have discretion on the classification to avoid the financial issues highlighted.

Dr. Meyer indicated that the Hospital is also part of a Medicare ACO, so their financial incentives are aligned with the patient’s.

Dr. Bernstein then reiterated his request for data to better understand the issues that the elder population faces due to payment concerns discussed today.

Ms. Rodman responded that the data that will be submitted by the Applicant will highlight that.

Joanna Lambert asked if there were ongoing patient education efforts to reduce maternal morbidity and mortality.

Ms. Moloney responded that the Hospital does engage the community in education programs and other efforts around this.

Dr. Kneeland confirmed that third party payers versus hospitals establish the payment rules in question, and that audits are conducted to verify accuracy.

Hospital representatives confirmed this.

Seeing no additional questions, Commissioner Bharel asked if there was a motion to accept the staff recommendation to approve this determination of need application. Ms. Lambert made the motion, which was seconded by Secretary Chen. All members present approved.

1. **PRELIMINARY REGULATIONS**

a. Informational overview of proposed amendments to 105 CMR 665.000, *Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems*.

Commissioner Bharel invited Lea Susan Ojamaa, Deputy Director for the Bureau of Community Health and Prevention, Ben Kingston, Director of Policy for the Bureau, and Sophia Apostola, Deputy General Counsel, to present proposed updates to DPH’s regulation addressing tobacco and vaping product sales

Upon the conclusion of the presentation, there were no questions from the Council members.

With no further agenda items, the Commissioner reminded the Council that the next meeting would take place Wednesday, April 15, 2020 at 9AM.

She then asked for a motion to adjourn. Ms. Prates-Ramos made the motion, which Dr. Bernstein seconded. All present members approved.

The meeting adjourned at 10:38 AM