MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of May 3, 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\*\*\* Friday, May 3, 2024 – 10:00AM**

***Note: The May 3 Public Health Council meeting will be held remotely as a video conference consistent with St. 2021, c. 20, s. 20, which provides for certain modifications to the Massachusetts Open Meeting Law.***

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

Join by Web: <https://zoom.us/j/99885682068?pwd=dHdEaGJkSjlOMkJrN0pvdEdiT2REZz09>

Dial in Telephone Number: 929-436-2866 Webinar ID: 998 8568 2068

Passcode: 580173

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

1. **EMERGENCY AMENDMENT**
   1. Request to amend, on an emergency basis, 105 CMR 130, *Hospital licensure* **(Vote)**.

*The Commissioner and the Public Health Council are defined by law as constituting the Department of Public Health. The Council has one regular meeting per month. These meetings are open to public attendance except when the Council meets in Executive Session. The Council’s meetings are not hearings, nor do members of the public have a right to speak or address the Council. The docket will indicate whether or not floor discussions are anticipated. For purposes of fairness since the regular meeting is not a hearing and is not advertised as such, presentations from the floor may require delaying a decision until a subsequent meeting.*

Attendance and Summary of Votes:

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

Date of Meeting: May 3, 2024 - Start Time: 10:03 am. Ending Time: 10:47 am.

| **Council Member** | **Attended** | **First Order:**  **Request to Amend on an Emergency Basis**  **105 CMR 130**  **Hospital Licensure (Vote)** |
| --- | --- | --- |
| **Commissioner Robert Goldstein** | Yes | Yes |
| **Edward Bernstein** | Yes | Yes |
| **Lissette Blondet** | Yes | Yes |
| **Kathleen Carey** | Yes | Yes |
| **Elizabeth Chen** | Yes | Yes |
| **Harold Cox** | No | Absent |
| **Alba Cruz-Davis** | Yes | Yes |
| **Michele David** | Yes | Yes |
| **Robert Engell** | Yes | Yes |
| **Elizabeth Evans** | Yes | Yes |
| **Eduardo Haddad** | Yes | Yes |
| **Joanna Lambert** | Yes | Yes |
| **Stewart Landers** | Yes | Yes |
| **Mary Moscato** | Yes | Yes |
| **Gregory Volturo** | Yes | Yes |
| **Summary** | 14 Members Present;  1 Members Absent | 14 Members Approved;  1 Members Absent |

**PROCEEDINGS**

An emergency meeting of the Massachusetts Department of Public Health’s Public Health Council (M.G.L. c. 17, §§ 1, 3) was held on Friday, May 3, 2024, by the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts 02108.

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

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

Commissioner Goldstein called the meeting to order at 10:03 am and made opening remarks before reviewing the docket.

**1. ROUTINE ITEMS**

*b. Introduction from Commissioner Robert Goldstein*

Commissioner Goldstein said this meeting was scheduled out of the typical Public Health Council schedule in order to attend to a timely matter.

He said the Department remains engaged in the response to Steward Healthcare in collaboration with the Healey-Driscoll administration, the Executive Office of Health and Human Services and with health care providers and communities in Eastern Massachusetts. The Department is identifying the necessary tools to protect access to safe and quality healthcare in all communities, including activating the Department’s emergency operations plan and incident command structure.

He said that due to federal requirements, the Centers for Medicare and Medicaid (CMS) previously required all hospitals to report daily occupancy and COVID-19 admissions data. The CMS requirement expired on April 30, 2024 and any new rule will not go into effect until October 1, 2024.

He said today’s ad hoc Public Health Council meeting will include a vote on emergency regulations to allow us to continue collecting these data for use in situational awareness and emergency planning, not just in the context of Steward Healthcare, but in a statewide role.

Commissioner Goldstein asked if there were any questions.

Dr. Haddad asked the Commissioner to speak on the recent ability to use surge beds, which are not necessarily licensed beds, in situations of over-capacity.

Commissioner Goldstein clarified that he was referencing a memo released during the COVID-19 pandemic, allowing the use of beds in a hospital setting that may not be clinically licensed. That memo was renewed multiple times and was slated to end April 30, 2024. Recently the Department renewed that memo, and it will be in place from May 1, 2024 through April 30, 2025. This will allow all acute care hospitals to use surge space when all their clinically licensed beds are full, and staffed, and used within certain parameters set by the Department.

Ms. Moscato asked if the emergency regulation they are voting on today, a result of the ending of the federal CMS data reporting, will include both COVID-19 data as well as occupancy data.

Commissioner Goldstein said the forthcoming presentation will provide more information, but he clarified that the federal CMS collection required COVID-19 data and for the first time required occupancy data from acute care facilities. The emergency amendment presentation will discuss occupancy data specifically.

Mr. Engell asked if the impact of this data collection will impact the various dashboards for the industry which he said are helpful.

Commissioner Goldstein said that the public respiratory virus dashboards published by DPH have a mixture of data feeds from multiple sources and this data was not a part of the CMS requirement.

1. **EMERGENCY AMENDMENT**
2. *Request to Amend, on an Emergency Basis, 105 CMR 130, Hospital Licensure* ***(Vote)****:*

Commissioner Goldstein invited Marita Callahan, Director of Policy and Health Communications for the Bureau of Health Care Safety and Quality, to present a request to amend, on an emergency basis, the Department’s regulations regarding hospital licensure.

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

Mr. Landers was concerned that there was a possible error in the proposed regulation language and inquired about the required demographic fields.

Commissioner Goldstein explained the CMS requirement asked for a series of demographic fields related to COVID-19 admissions and not hospital occupancy. Because we won’t be collecting COVID-19 data with this emergency regulation, but only hospital occupancy, it doesn’t have the established fields for demographics. The Department will work with hospitals to understand what fields will be included in this collection.

Dr. Katherine Fillo, Director of Healthcare Strategy and Planning confirmed that at this time they will not be collecting patient demographic information.

Mr. Landers reiterated that the language in the proposed emergency regulation and needs attention.

Rebecca Kaye, Senior Deputy General Counsel agreed that the language had a typo and can be corrected.

Ms. Blondet asked for confirmation that prior to the CMS requirement, Massachusetts did not monitor bed occupancy of hospitals.

Commissioner Goldstein confirmed that there was not a regulation, statute, or requirement for the collection of bed occupancy.

Ms. Blondet said that the collection of demographic data is important and asked how difficult it would be to collect race, ethnicity, and payer type while collecting bed occupancy.

Commissioner Goldstein said that this is just one data set collected by the Department. There are other data sets including syndromic surveillance data, that is more comprehensive and gives the Department a better understanding of race, ethnicity, zip code, and payer status. He said to build out this data collection could be duplicative and burdensome on hospitals and go beyond a reasonable request for these regulations.

Dr. Bernstein said he was pleased to see a continuation of bed occupancy data collection. He said the memo speaks of capacity by service lines such as medical, surgical, or intensive care. He felt that it’s important to also include the emergency department because there are input, throughput, and output issues that have gone unaddressed for a long time and are significant to this crisis.

Commissioner Goldstein agreed and said that some of the data collected will include emergency department data like the number of boarders of various service lines; adult, pediatric, and behavioral health which will help understand ED capacity.

Dr. Bernstein said that he did not see the 46 required data fields discussed in the memo and wanted to know if they would be sent.

Commissioner Goldstein answered that they are a subset of the fields that CMS had required but they do not include COVID-19 admission data.

Dr. Fillo specified additional data regarding bed occupancy that will be included like adult medical, surgical unit, psychiatric unit, intensive care unit, maternal and newborn staffed and occupied beds as well as neonatal and those same measures for pediatric. In terms of emergency departments, the data will include both emergency department volume for adults and pediatric patients and ED boarders which are patients that are being admitted but not yet transferred to the inpatient floor, for adults, pediatric, and psychiatric patients.

Dr. Bernstein suggested an addition to emergency room data of in and out transfers – those that cannot be transferred out due to occupancy, or those that cannot be transferred in.

Dr. Fillo reminded the council that there are currently syndromic surveillance data sets that also collect patients leaving the ED without being seen as well as average wait time in the ED. She said they are working to pull all the data sets information together for a comprehensive picture.

Dr. Haddad asked if this data would collect patients that are under observation but occupying a bed. He also asked, because this data is so essential, will the Department keep this as a permanent regulation for Massachusetts regardless of what CMS enacts in the Fall or is this just an interim measure.

Commissioner Goldstein replied regarding the emergency regulation saying that it will go into effect once voted upon and filed with the Secretary of State, and will remain in effect until rescinded. He stated that it would be complementary to the federal requirement once established in the Fall.

Dr. Fillo clarified that the term “inpatient” refers to both observation admissions and inpatient admissions.

Dr. Volturo raised that the regulation requires hospitals to report daily information at least weekly, but non-acute hospitals to report annually. He asked if it would be possible to receive more timely information from the non-acute settings to help achieve better flow.

Commissioner Goldstein said this was written to directly mirror the former federal requirements. He said the long term hospitals are welcome to share data voluntarily and across the state they have provided data when necessary. He offered to reach out to the council for their views on long term facility reporting but reminded the council to be mindful of the burden this can impose on smaller facilities to report this data.

Dr. Fillo mentioned the narrow definition of what a non-acute hospital is and stated that all rehabilitation hospitals fall under the category of acute care and are required to report daily.

Ms. Moscato asked if there is data collection to provide a comprehensive view on the number of patient days that patients are in acute care beds while they have been waiting for transfer. She said the Hospital Association and Mass Health collect reporting with case managers, but only 50% of hospitals report that data.

Dr. Fillo said although there are mechanisms in place to move patients to post-acute care, she does not believe that the data breaks down to patients in beds ready for discharge.

Ms. Carey emphasized the strategic importance of continuing this data collection.

Dr. Bernstein asked if it was possible to have data collected in one set and if currently all the different data sets are merged in a timely fashion.

Commissioner Goldstein replied that with the help of the federal government, the CDC, the Department has been working on the agency-wide Data Modernization Initiative. The point being that modernization recognizes that all the data pipes have to connect to each other. Currently data comes in from local boards of health, and from different parts of the Executive Offices of Health and Human Services, and the Department needs to make sure that all these data pipes connect, and we see a comprehensive picture of what is happening in Massachusetts. Right now, the comprehensive picture is difficult, but the goal is to do exactly that and have transparent data that the public can see.

Dr. Bernstein said that the council has recommended that equity data be included in this demographic data. He said in this crisis if we don’t pick up the equity issues, we’re not going to be able to provide the safety and quality that we want. You can’t separate quality and equity.

Commissioner Goldstein agreed and asked Mr. Landers to confirm the request he had raised earlier.

Mr. Landers explained that to avoid confusion and offer clarity to the regulation that the typo should be rectified before voting.

Ms. Kaye questioned whether a vote was necessary to amend the typo.

Beth Mclaughlin, General Counsel, said that the vote for the regulation can take place by including that the language will be changed.

With no further questions, Commissioner Goldstein asked if there was a motion to amend, on an emergency basis, 105 CMR 130, *Hospital Licensure.*

Ms. Blondet made the motion, which was seconded by Dr. Haddad. All other present members approved.

Commissioner Goldstein reminded the Council that the next meeting is scheduled for Wednesday, May 15, 2024, at 9 AM.

Commissioner Goldstein asked if there was a motion to adjourn.

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

The meeting was adjourned at 10:47 am.