

MINUTES OF THE PUBLIC HEALTH COUNCIL

MEETING OF OCTOBER 12, 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

Docket: Wednesday, October 12, 2011, 9:07 AM

1. ROUTINE ITEM: No Floor Discussion

- a) Compliance with Massachusetts General Laws, Chapter 30A **(No Vote)**
- b) Record of the Public Health Council Meeting of July 13, 2011 **(APPROVED)**

2. DETERMINATION OF NEED: BULLETIN OF ANNUAL ADJUSTMENTS TO DoN EXPENDITURE MINIMUMS

Request for Approval of Informational Bulletin on Annual Adjustments to DoN Expenditure Minimums **(APPROVED)**

3. DETERMINATION OF NEED: CATEGORY 1 APPLICATION

Project Application No. 4-4942 of Eastern Massachusetts Surgery Center, LLC:
Transfer of ownership of an Ambulatory Surgery Center **(APPROVED)**

4. DETERMINATION OF NEED: COMPLIANCE MEMORANDUM

Previously Approved Application No. 4-4886 of Umass Memorial MRI and Imaging Center, LLC: Request for a significant change to add an additional host site, Wing Memorial Hospital and Medical Center in Palmer **(APPROVED)**

5. REGULATIONS: No Floor Discussion

- a) **Request to Promulgate Amendments to 105 CMR 164.000:** Licensure of Substance Abuse Treatment Programs **(APPROVED)**
- b) **Request to Promulgate Amendments to 105 CMR 590.000:** State Sanitary Code Chapter X – Minimum Sanitation Standards for Food Establishments (pertaining to comply with M.G.L. c. 111, s. 222(g) regarding School Kitchen Inspections) **(APPROVED)**

6. PROPOSED REGULATION: No Floor Discussion/ Information Only (No Vote)

Proposed Amendments to 105 CMR 300.000: Reportable Disease, Surveillance, and Isolation and Quarantine Regulations (pertaining to Laboratory evidence of HIV infectious/AIDS)

7. PRESENTATION: No Vote/Information Only

"Primary Stroke Services in Massachusetts Acute Care Hospitals"

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.

PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on October 12, 2011, at 9:07 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, Dr. John Cunningham, Dr. Michele David (arrived at 9:14 a.m.), Dr. Muriel Gillick, Ms. Helen Caulton-Harris, Mr. Paul Lanzikos (arrived at 9:17 a.m.), Mr. Jose Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman (arrived at 9:25 a.m.), Dr. Alan Woodward and Dr. Zuckerman. Absent members were: Mr. Harold Cox, Mr. Denis Leary, Ms. Lucillia Prates Ramos and Dr. Michael Wong. Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health. Chair Auerbach began the meeting and announced that notice of the meeting has been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance.

ITEM 1: RECORD OF THE PUBLIC HEALTH COUNCIL MEETING OF JULY 13, 2011

The motion was made to approve the minutes of July 13, 2011. Dr. Woodward seconded the motion and made a comment asking for a follow up to the issue of potable water which came up at the July meeting and was summarized on page 8 of the minutes. Chair Auerbach noted that more information would be forthcoming on this issue. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the minutes of July 13, 2011 as presented. Dr. Cunningham, Dr. David, Dr. Gillick, Ms. Caulton Harris, Mr. Lanzikos, Mr. Rivera, Dr. Rosenthal, and Dr. Zuckerman voted in favor of the motion. Mr. Sherman was not present for the vote. The motion was approved.

Chair Auerbach recognized Dr. Woodward.

RESOLUTION: INFLUENZA VACCINE

This resolution was not on the docket. It is a continuation from the Public Health Council meeting in September 2011. The Council considered a resolution offered by Dr. Woodward during the September meeting regarding influenza vaccine of healthcare workers.

At the end of the September meeting, Dr. Madeleine Biondolillo presented on vaccination rates for influenza in the hospital. Dr. Woodward and the Public Health Council members had an informal discussion and agreed to return to the issue when they had a full quorum present.

Dr. Madeleine Biondolillo presented to the Council a number of slides including the data for the year 2010 to 2011, saying "...for the coming year, or the year that we are in right now, 2011 -2012, we set the bar considerably higher and really encourage all the acute hospitals, who have been reporting now for two years and the past year's data ... to be at an average rate of ninety percent of vaccination for their employees for that rate, and that no facility would fall below the minimum acceptable standard of seventy-one percent, which is just a little bit higher than the average was for this year."

Dr. Rob Duncan from Lahey Clinic presented to the Council its initiative to achieve a higher rate of vaccination in healthcare organizations. He communicated some strategies they previously used at Lahey Clinic. Dr. Ken Sands from the Beth Israel Deaconess Medical Center on behalf of the Eastern Massachusetts Healthcare Initiative was also invited to speak.

Dr. Woodward proposed a resolution in support of the initiatives of health care organizations and to increase the percentage of vaccines being administered to healthcare workers. Dr. Woodward asked the Council to support the efforts by the Department, and other healthcare organizations and institutions, to maximize annual seasonal influenza immunization rates for all direct patient contact healthcare personnel through mandating immunization.

Please see verbatim transcript for full discussion between Dr. Madeleine Biondolillo, Dr. Woodward and the Public Health Council.

Dr. Woodward made the motion to endorse the encouragement of immunization vaccines as a condition of employment. In addition to supporting the efforts that will be made by the Department, healthcare organizations and institutions, it will maximize the annual seasonal influenza immunization rates for all direct patient contact health care personnel. Mr. Sherman seconded the motion with an additional friendly amendment to change the wording. After consideration, upon motion made and duly seconded, it was voted the Public Health Council supports efforts by the Department and other healthcare organizations and institutions to maximize annual seasonal influenza immunization rates for all direct-patient-contact healthcare personnel through all appropriate means up to including mandating immunization as a condition for employment. Chair Auerbach, Dr. Cunningham, Dr. David, Dr. Gillick, Ms. Caulton Harris, Mr. Rivera, Dr. Rosenthal, and Dr. Zuckerman voted in favor of the motion. Mr. Lanzikos opposed the motion. The motion was approved.

The following action steps are associated with this approved motion:

- The Council will circulate this position to hospitals and the Massachusetts Hospital Association and other interested parties.

- In the spring 2012, as the point that the Department has preliminary data on healthcare worker vaccination, the Council would like an informal hearing on this report.

ITEM 2: DETERMINATION OF NEED: REQUEST FOR APPROVAL OF INFORMATIONAL BULLETIN ON ANNUAL ADJUSTMENTS TO DoN EXPENDITURE MINIMUMS

Joan Gorga, Director of the Determination of Need Program presented the Annual Adjustment Proposal to the Council. In addition, Ms. Gorga requested the adoption of the Annual Informational Bulletin, which established the Determination of Need Expenditure Minimums. The minimum would increase each year through the use of two indices, Marshall and Swift Evaluation Services for capital costs, and the Global Insight Healthcare Cost Review for operating cost. Ms. Gorga stated "inflation in capital costs in Massachusetts was about three percent over the past year. Projects with a dollar value below the minimums do not require the filing of a Determination of Need application. Staff asks that you adopt the information bulletin and the expenditure minimums for the next filing year."

Dr. Woodward made the motion to approve the **Request for Approval of Informational Bulletin of Annual Adjustments to DoN Expenditure Minimums**. Mr. Rivera seconded the motion. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the request. Chair Auerbach, Dr. Cunningham, Dr. David, Dr. Gillick, Ms. Caulton Harris, Mr. Lanzikos, Dr. Rosenthal, Mr. Sherman and Dr. Zuckerman voted in favor of the motion. The motion was approved.

Chair Auerbach asked Donna Levin to investigate whether or not the annual adjustments can be delegated as an administrative function rather than a Public Health Council function. If so, this would be the last time the Public Health Council would vote on this issue.

Please see verbatim transcript for full discussion between Joan Gorga and the Public Health Council Board.

ITEM 3: DETERMINATION OF NEED: CATEGORY 1 APPLICATION – PROJECT APPLICATION NO. 4-4942 OF EASTERN MASSACHUSETTS SURGERY CENTER LLC: Transfer of ownership of an Ambulatory Surgery Center

Joan Gorga, Director of Determination of Need (DoN) and Bernard Plovnick, Senior Analyst of Determination of Need Program presented the Transfer of Ownership application for Eastern Massachusetts Surgery Center. Dr. Gillick recused herself from the vote.

The application for Determination of Need concerns the transfer of ownership of Eastern Massachusetts Surgery Center, LLC, a physician-owned, multi-specialty ambulatory surgery center, located in Norwood, Ma. Mr. Plovnick presented on the approval of the application. He stated “the applicant is a Tennessee Limited Liability Company to be formed pending the approval of this application. AmSurg Holdings, Inc., a owned subsidiary of the AmSurg Corporation of Nashville, Tennessee would purchase a sixty-five percent share of the assets of the Eastern Massachusetts Surgery Center with the existing physician owners retaining a thirty-five percent share of the assets of the Eastern Massachusetts Surgery center with the existing physician owners retaining a thirty-five percent share.”

AmSurg Holdings is a private for-profit corporation which specializes in partnering with physician practices who operate ambulatory surgery centers. Over two hundred centers in thirty-three states are owned and operated by AmSurg Holdings, including the Commonwealth Endoscopy Center in Bridgewater, Massachusetts. The council approved a Determination of Need applicant for Bridgewater back in January 2009; it can be reference by **DoN Project No. 5-4932**. This application was reviewed in accordance with the Alternate Process for Transfer of Ownership, as set forth in Section 100.6000 of the DoN Regulations. The principle requirements of the regulations include retention of a measure of local control, and continued access for patients served by MassHealth or by Medicare.

Staff found satisfactory compliance with these requirements and recommended approval of this project with two conditions: the Office of Health Equity would improve access to people with limited English proficiency and the applicant must maintain Medicare certification. The applicant agreed fully with the conditions of approval.

The applicant was represented by Dr. Mark Nannery, the President and Medical Director of the Center and by Mr. Alan Einhorn of Foley and Lardner, LLP. There is no capital expenditure associated with this Determination of Need for transfer of ownership and no comments were submitted by other interested parties.

Dr. Rosenthal made the motion to approve the **Determination of Need: Category 1 Application – Project Application No. 4-4942 of Eastern Massachusetts Surgery Center LLC**. Ms. Caulton Harris seconded the motion. After consideration, upon motion made and duly seconded, it was voted to approve the application. Chair Auerbach, Dr. Cunningham, Dr. David, Mr. Lanzikos, Mr. Rivera, Dr. Woodward and Dr. Zuckerman voted in favor of the motion. Dr. Gillick excused herself from the vote. Mr. Sherman was not present for the vote. The motion was approved.

Please see verbatim transcript for full discussion between Joan Gorga and the Public Health Council Board.

ITEM 4: DETERMINATION OF NEED: COMPLIANCE MEMORANDUM – PREVIOUSLY APPROVED APPLICATION NO. 4-4886 OF UMASS MEMORIAL MRI AND IMAGING CENTER, LLC: Request for a significant change to add an additional host site, Wing Memorial Hospital and Medical Center in Palmer

Joan Gorga, Director of the Determination of Need Program (DON), presented on the change to add an additional host site for Wing Memorial Hospital and Medical Center in Palmer, Massachusetts. Dr. Cunningham recused himself from the discussion and Donna Levin did not participate in the discussion. Susan Stein from the Office of General Counsel replaced Donna Levin for this presentation.

Ms. Gorga requested for significant change filed by Umass Memorial MRI Imaging Center, LLC, a member of the consortium of providers that hold DoN approval for the previously approved DoN Project No 4-4886, a mobile positron emission tomography services. The change involves the addition of Wing Memorial Hospital and Medical Center in Palmer as a sixth host site to provide one half day of mobile service every two weeks. Wing Memorial Hospital is a Umass affiliate.

The number of days allocated to Umass MRI Imaging would be reallocated to allow for a half day of operation at Wing Memorial every two weeks. There will be no capital expenditure to provide the service at Wing, as the service can use the same PET trailer and equipment used to provide the service at other locations. The existing mobile technology dock at Wing will be used to provide the service.

Mr. Rivera made the motion to approve the request for **Previously Approved Application No. 4-4886 of Umass Memorial MRI and Imaging Center, LLC**. Mr. Sherman seconded the motion. After consideration, upon motion made and duly seconded it was voted to approve Application No. 4-4886. Chair Auerbach, Dr. David, Ms. Caulton Harris, Mr. Lanzikos, Dr. Rosenthal, Dr. Woodward and Dr. Zuckerman voted in favor of the motion. Dr. Cunningham excused himself from the vote. Dr. Gillick was not present for the vote. The motion was approved.

Please see verbatim transcript for full discussion between Joan Gorga and the Public Health Council Board.

Senator Richard Moore, Chairman of the Joint Committee on Healthcare Finance

The recognition of Senator Richard Moore's work was not on the docket. Donna Levin and Dr. Gillick re-joined the other Council members. Chair Auerbach thanked Senator Richard Moore for his leadership on Healthcare Reform and healthcare issues.

Senator Moore's key initiative included the landmark Healthcare Reform Legislation, which made a difference not only in Massachusetts but across the country. He also took leadership in a collaborative drug therapy management and Payment Reform. Senator Moore stated in part, "I really appreciate the support of Council, and I know most of you. I have worked with a lot of you over the years in Public Health and in healthcare in general, and we have made a lot of progress in Massachusetts. We still have a ways to go in a number of areas, and I am hoping that, as we move into the new world of whatever it looks like, Payment Reform and Quality Improvement...will focus really on the patient and on improving the quality of care, which ought to then save us some money, or at least spend it more wisely in the process, not necessarily focusing just on cutting costs."

Chair Auerbach presented Senator Richard Moore the Public Health Hero Award in recognition of his outstanding contributions to improving healthcare quality while promoting and protecting the health of the residents of the Commonwealth of Massachusetts.

Please see verbatim transcript of Chair Auerbach acknowledgement of Senator Richard Moore.

ITEM 5A: REQUEST TO PROMULGATE AMENDMENTS TO 105 CMR 164.000: Licensure of Substance Abuse Treatment Programs

Hillary Jacobs, Deputy Director of the Bureau of Substance Abuse Services and Lisa Snellings, Deputy General Counsel presented the regulation to create an alternative licensing process for accredited opiate treatment programs. The Bureau of Substance Abuse Service, works as a single state authority, responsible for licensing patient treatment program and counselors. They also contract case management and recovery support services. They held a public hearing on August 12, 2011. The next implementation date from The Executive Office of Health and Human Services is October 28, 2011.

Please see verbatim transcript for full comments made towards the proposed amendments from the hearing on August 12, 2011.

Chair Auerbach suggested to Hilary Jacobs to relay a copy of the letter that will be sent to the Council members and substance abuse treatment providers that reference Narcan.

Mr. Sherman made the motion to approve the **Request to Promulgate Amendments to 105 CMR 164.000**. Dr. David seconded the motion. After consideration, upon motion made and duly seconded it was voted to approve to regulation 105 CMR 164:000. Chair Auerbach, Dr. Cunningham, Dr. Gillick, Ms. Caulton Harris, Mr. Lanzikos, Mr. Rivera, Dr. Rosenthal, Dr. Woodward and Dr. Zuckerman voted in favor of the motion. The motion was approved.

Please see verbatim transcript for full discussion between Hilary Jacobs, Lisa Snellings and the Public Health Council Board.

ITEM 5B: REQUEST TO PROMULGATE AMENDMENTS TO 105 CMR 590.000: State Sanitary Code Chapter X – Minimum Sanitation Standards for Food Establishments (pertaining to comply with M.G.L. c. 111, s. 222(g) regarding School Kitchen Inspections)

Suzanne Condon, Director of the Bureau of Environmental Health, and Priscilla Fox, Deputy General Counsel, shared feedback with the Council from the public comment process on the Sanitation Standards Regulations. Suzanne Condon reviewed the amendment of the School Kitchen Inspections associated with the School Nutrition Law.

The key elements of the School Nutrition Law are required for Nutritional Standards to be developed in competitive foods. The regulations for Remote School Wellness Advisory Committees focused on training public school nurses, screening of obesity, diabetes, eating disorders and the status from the Commission on School Nutrition. The Department promulgates regulations requiring local health officials to conduct safety inspections at public schools with the frequency required by State and Federal. Public Schools should track and report the results of these inspections, including any violation and steps that need to be taken to remediate violations for each school to the Department and the Department of Elementary and Secondary Education (DESE). Ms. Condon stated in part, "...The Board of Health shall report the results of each violation and steps that have been taken to remediate such violations."

The proposed amendments added a new definition to School Kitchens. School kitchen is described as a kitchen area used during the course of the regular school day to prepare breakfast, lunch and/or dinner to students in an elementary, middle, high school. School Kitchens does not refer to kitchens used by Culinary Arts Programs, exclusively by faculty or staff or kitchens used to prepare and service food outside of the regular school day. The statute requires inspections to be conducted with the frequency required by State and Federal Law. The new requirement for proposed regulation require inspections at least once every six months, and at least twice during the school year. The proposed regulation added an additional inspection as a requirement when a local board of health received a

public complaint about a school kitchen. The additional inspection is required when the permit holder or the Department is notified of food produced used at the school kitchen are the subject of a recall or a notice. However, it shall not include any complaint regarding a violation of 105 CMR 225.000, The Nutritional Standards for Competitive Foods and Beverages in Public Schools.

The record keeping requirement of the statute required tracking and reporting of the results of inspections including any violations and steps to remediate violations for each school to both the Department and the Department of Elementary and Secondary Education (DESE). The statute requires all reports and information collected or received by the Department and DESE to be public records. The proposed regulations state this information is available for public disclosure unless exempted by law.

These proposed amendments were presented to the Council on May 11, 2011. A public hearing was held on June 23, 2011. The period for written testimony closed on July 1, 2011. The Department only received two written comments and no oral testimony at the hearing.

Please see verbatim transcript for comments made during the June 23, 2011 public hearing.

Dr. Woodward moved for a motion to approve the **Request to Promulgate Amendments to 105 CMR 590.000** with an understanding that there is a sub-regulatory intent of the Council to use the force of the Department to encourage the application of the regulations to private school. Mr. Rivera seconded the motion. After consideration upon motion and duly seconded, it was voted to approve regulation 105 CMR 590.000. Chair Auerbach, Dr. Cunningham, Dr. David, Dr. Gillick, Ms. Caulton Harris, Mr. Paul Lanzikos, Dr. Rosenthal, Mr. Sherman and Dr. Zuckerman voted in favor of the motion. The motion was approved.

Item 6: PROPOSED AMENDMENTS TO 105 CMR 300.000: Reportable Diseases, Surveillance, and Isolation and Quarantine Regulations (pertaining to Laboratory evidence of HIV infection/AIDS)

Kevin Cranston, Director of the Bureau of Infectious Disease, and Betsy John, Director of the HIV/AIDS Surveillance Program, proposed a period for public comment on the amendment - Reportable Disease Surveillance and Isolation and Quarantine Regulations. Mr. Cranston proposed an addition to their current laboratory and electronic laboratory for HIV and AIDS. This addition would have potential benefits for the Commonwealth in Federal allocation that is based on prevalent HIV and AIDS cases.

The laboratories received a comprehensive list of all reportable diseases by clinical laboratories. The benefits of the proposed regulations would improve HIV and AIDS

case funding dramatically. Additionally, the proposed changes have the full support of the HIV Implementation Team, which is an external advisory group that consists of clinical providers, HIV positive consumers, legal advocates, local health and community-based organization representative.

Currently, healthcare providers are mandated to report all of HIV and AIDS cases to the Department while using a full paper-based case report form. Providers of counseling and testing sites have used an abbreviated form to report to the Department, while laboratories are required to report any evidence diagnosis of HIV infection. The Ryan White grant funding allocation formula is a name base reporting system for HIV and has been granted to Massachusetts. It is a longitudinal funding stream for all the states, cites and local programs that grant the Department resources for care and support services for people with HIV and AIDS. It is approximately twenty million dollars of direct allocation. Thirteen million dollars is to assist HIV patient in the City of Boston and the larger Metropolitan area. It is a critical funding stream for supporting services for people with HIV.

Between November and December, the Bureau of Infectious Disease will hold a public hearing to elicit comments from the community on their revisions. While, December to January, the Bureau will share the report of the public hearing to the Public Health Council and request promulgation of 105 CMR 300.000 as revise. In January 2012, the Bureau of Infectious Disease will announce to all laboratories the amendments that require regulates.

Please see verbatim transcript for full discussion between Kevin Cranston, Betsy John and the Public Health Council Board.

Item 7: Primary Stroke Services in Massachusetts Acute Care Hospitals

Dr. Madeleine Biondolillo, Director of Bureau of Health Care Safety and Quality, presented on the Primary Stroke Services (PSS) designated for hospitals in Massachusetts. PSS requires stroke protocols for patient assessment care in which hospitals and emergency diagnostic and therapeutic services have to provide twenty-four seven, three hundred and sixty-five service. PSS collects data on all patients that present in an emergency department with acute stroke symptoms within the first three hours.

On June 4, 2010 the Department released the first report on PSS hospital performance, and the percentage of eligible patients receiving IV-tPA, IV tissue plasminogen activator was released in calendar year increments. This graph displays PSS hospitals by region. This is disbursed throughout the state and is concentrated in the Metro Boston area.

The report will be released on the Department's website including information by geographic region, by size of the hospital and by their teaching status.

Please see verbatim transcript for discussion on data and graphs showing PSS hospital.

Please see verbatim transcript for full discussion between Dr. Madeleine Biondolillo and the Public Health Council Board.

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
- Public Health Council Meeting Minutes from July 13, 2011
- Determination of Need (DoN) Category 1 Application memorandum on Informational Bulletin on Annual Adjustments to DoN Expenditure Minimums
- Staff Summary for Determination of Need by the Public Health Council – Eastern Massachusetts Surgery Center, LLC
- Determination of Need (DoN) Previously Approved Application No. 4-4886 Umass Memorial MRI and Imaging Center, LLC – Addition of Wing Memorial Hospital to the Mobile PET Service
- Request to Promulgate Amendments to 105 CMR 164.000 Licensure of Substance Abuse Treatment Program Relating to Establishment of an Alternative Licensing Process for Accredited Opioid Treatment Programs, and Clarifications and Corrects
- Proposed Amendments to 105 CMR 590.000: State Sanitary Code Chapter X- Minimum Sanitation Standards for Food Establishments, to comply with M.G.L. c. 111 s. 222(g) regarding School Kitchen Inspections
- Informational briefing memorandum of Proposed Amendments to 105 CMR 300.000: Reportable Disease, Surveillance, and Isolation and Quarantine Regulations

The meeting adjourned at 11:50 a.m.

Chair John Auerbach