

RULES ADVISORY COMMITTEE
Relating to Passage of HB 3100 and HB 2310
August 16, 2017
Minutes

Attendance:

Rules Advisory Committee members present: Brad Anderson, David Bangsberg, Christina Bodamer, Muriel DeLaVergne-Brown (phone), Dawn Emerick, Annabelle Jaramillo (phone), Fauna Larkin, Greg Miller, Rebecca Pawlak, Courtney Vanbragt (phone), and Jocelyn Warren

Oregon Health Authority (OHA) Staff: Sara Beaudrault, Cara Biddlecom, Danna Drum, Kim La Croix, and Angela Rowland

Oregon Department of Justice Staff: Shannon O’Fallon

Members of the Public: Carrie Brogoitti, Pam Hutchison, Sherry Olson, Jasmeen Gill, Low Lewis

Overview of Rulemaking Process:

HB 3100 (2015): Adopted the public health modernization framework and put in place requirements for an assessment and plan as well as funding formulas for new state funds for public health modernization.

HB 2310 (2017): Passed unanimously out of the House and Senate during the 2017 legislative session. It was signed by Governor Brown on August 2nd, 2017. HB 2310 made adjustments and modifications to what passed in HB 3100, and clarified how public health modernization will be implemented. The bill included clarifying the circumstances when a Local Public Health Authority (LPHA) could transfer authority back to the state. Provided guidelines for LPHA subcontracting of public health services and created new requirements for the use of accountability metrics to track progress toward public health modernization.

This Rules Advisory Committee will be providing subject matter and advisory expertise as a legislative mandate to promulgate rules and will not be making decisions.

Timeline:

- Rules Advisory Committee meetings on August 16, 2017 and September 14, 2017.
- Public Hearings: November 27 in Medford, November 29 in Pendleton and December 4 in Portland.
- Public Comment Period during November 2017.

- Submission to the Secretary of State.
- In Effect Date: January 1, 2018.

Cara Biddlecom provided a detailed overview on the history of Public Health Modernization in Oregon.

Proposed Rule Language Discussion

Definitions OAR 333-014-0510

Shannon O’Fallon stated that these rules repeal and replace existing administrative rules.

Brad Anderson asked if the rules have been vetted by the Coalition of Local Health Officials (CLHO). Kim La Croix stated that there is a CLHO representative on the Rules Advisory Committee (Jocelyn Warren) and there will be a public comment period in November where CLHO is encouraged to submit comments.

Rebecca Pawlak asked what statute ORS 431.003 points to. Shannon stated that [431.003](#) is the definition section of the Public Health rules which were referenced here.

Local Public Health Administrators OAR 333-014-0520

David Bangsberg referred to section (a) asking if a bachelor’s degree must be tied to public health experience and these activities. An individual could have a biology degree with a master’s in public health. Based on the language the “and” should be removed. Also regarding section (b) it excludes work experience in a health care delivery organization or a university. Muriel DeLaVergne-Brown stated that in the past, previous work experience has not been prohibitive and recommended the language be clear and include experience in health care delivery or a university. She recommended that the requirements be more open, especially for rural counties. Shannon said that the statute says that OHA should set expectations through standards but cannot require a LPHA to adhere to those standards. Fauna Larkin summarized that it should read (a) A bachelor’s degree and, (b) public health experience, (c) specific competencies in these areas. Fauna works in a rural area and understands the difficulty to recruit, therefore as long as the competencies are demonstrated, the previous work experience doesn’t matter. Rebecca stated that these competencies are core tracks for a master’s in public health degree and perhaps Oregon should align with the foundational capabilities including Communications or Policy and Planning. Fauna agreed. Muriel commented that currently some administrators don’t possess a bachelor’s degree and inquired if they are grandfathered in. Shannon reiterated that the current statute includes suggested standards but not an enforceable requirement.

Brad asked if this is a new rule. Kim stated there are some guidelines in the CLHO minimum standards and the statute. Shannon commented that currently OAR 333-014-0070 says each county shall employ a qualified health administrator who is responsible for the health

department. Some minimum standards are not incorporated by reference into rule and the language was borrowed here. Brad stated that he has worked in all size counties and understands minimum standards. He says that small counties will not be able to fit these standards especially in their pay schedule. Southern counties struggle to recruit and retain rural law enforcement. This could result in counties who have a fancy public health department at the expense of public emergency needs.

Brad asked why in section (2) is a LPHA administrator's resume required to be provided to the state. Cara remarked that it is procedural in nature and ensures the flow of communication between LPHA and the state around new leadership. Brad remarked that mental health directors are not required to provide resumes to the state. Shannon stated that OHA is setting standards and it helps to understand which LPHA is having issues with meeting them. Fauna commented that the modernization model is aiming to accomplish a set of foundational capabilities, which haven't been done before, so it is important to understand who is running the LPHA for technical assistance. She asked if a resume isn't a good way to provide that insight then what the alternative is. Muriel thought the resume is helpful from a training perspective to help train new administrators in certain areas.

Regarding section (3) Greg Miller asked in what scenario would there be a part time LPHA administrator. Danna Drum answered that at times a county will subcontract public health services. There is a need to maintain a tie to the governance function for LPHA. Typically a local public health administrator is a part-time employee of the county and a part-time employee of the subcontractor providing public health services. Grant, Douglas, Columbia, and Union counties run this way. Wheeler has a part-time administrator because they are a small county. Brad says that this is out of the OHA scope and OHA should not dictate to counties on how they should employ their employees. He would like to see a "shall" rather than a "must" and the county should explain the exceptions. Shannon responded that this is a rule already. ORS 431.418 (4) states *the local public health authority may, with the approval of the Director of the Oregon Health Authority, require the local public health administrator to work less than full-time*. Brad has not seen a request to work less than full time in practice. Danna says there are times when this comes to OHA and it creates a hybrid relationship with the subcontractor. Fauna states that this doesn't say that the county has to have a full time employee, but rather that a LPHA (which consists of a county, or intergovernmental entity) must. The LPHA responsible to fulfill the modernization of public health foundational capabilities and programs therefore must be full time to provide that work. Danna says that this is not new. Danna stated that some counties have a part time local public health director and a part-time administrator for a non-profit providing public health services as a contractor to the county. In these situations administrators get two pay checks. Brad stated that some counties are aiming to steer away from any state function and might look for alternatives. Counties prefer to choose

how resources are distributed. Kim stated that public health is changing and there will be new ways to provide public health services.

Incentives and Matching Funds 333-014-0530

Christina Bodamer inquired if counties in a non-traditional format are being considered in the funding formula. Cara stated that the Public Health Advisory Board (PHAB) and OHA have a process to develop a funding formula every even numbered year, as changes take place the formula could be changed. Rebecca stated that matching funds will also be provided for counties who invest in public health. Fauna recommended to add a process here to make this more digestible.

Dawn Emerick inquired whether the funding formula accounts for LPHAs who are accredited or going through the process, since there is a strong emphasis in becoming accredited. Cara stated that the statute calls out specific criteria for base funding, incentives tied to performance on accountability measures, and matching funds for county general fund investment in foundational programs for local public health. LPHA accreditation is not called out in the formula but aligns very well with public health modernization.

Brad inquired if the base funds are part of the current service level Financial Assistance Agreement (FAA) funds. Cara stated that the funding formula is for new monies. Brad asked if this is the \$5M (yes). Cara informed him that since the money provided this biennium is not sufficient to go through the formula it will go through a competitive request for proposal (RFP). Brad inquired if the current service level FAA is decreasing. Cara stated that it will continue as is.

Greg asked if matching funds in section (3) are tied to specific buckets of work. Kim stated that the intent is to show county investment in the foundational programs and capabilities. Jocelyn asked how the base funding could be changed. Cara stated that OHA submits the funding formula to Legislative Fiscal Office in June of every even year.

Accountability Metrics 333-014-0540

Brad commented regarding section (4) *the time, form and manner prescribed by the “financial assistance agreement” rather than the “Authority”*. Danna responded that the projected revenue was collected over the years as a part of the annual plan. These rule changes remove the annual plan and will collect actual revenue and expenditure data instead. Brad stated that reporting takes a substantial amount of time. Danna stated OHA is collecting actual revenue and expenditure data this fall and working with CLHO to develop the tool. Courtney Vanbragt asked if the funding streams in the FAA align with the accountability metrics or will some activities not be funded. Danna stated that the current FAA funding streams are tied to Program Elements with federal requirements. Over time OHA wants to align with the accountability metrics where possible. The way the federal funding streams happen sometimes

makes it difficult to do that. OHA is working on identifying how program requirements align with foundational capabilities and programs in each Program Element. Courtney stated that her county (Klamath) doesn't get a lot of funding and doesn't align with the work implicit in the accountability metrics, which seems difficult.

Fauna commented that CLHO does not have Tribal representation so Tribes will not be consulted around the accountability metrics. She urges Tribes be consulted on this work in the future. David asked if Tribal consultation is included in the PHAB. Danna stated when this work was first created it was legislatively focused on LPHAs, and with HB 2310 there is now a position for a Tribal member on the PHAB. The state cannot hold Tribes accountable since they are sovereign nations. Accountability metrics are tied to the LPHA statute.

Rebecca recommends the change in section (1) instead of *the authority would work with PHAB*, instead state "*will advise*" or "*consult*" as "*work with*" is too ambiguous.

LPHA Foundational Program Activities and Services 333-014-0540

Brad inquired if the Public Health Modernization Manual is in rule currently and requested a copy. Cara stated it is not currently in rule. Kim said it is located on the OHA website at: http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf. Fauna inquired how often the Modernization Manual is updated. Kim responded that OHA will be doing a few minor edits this fall. It was developed with CLHO and is not anticipated to be updated in the near future.

David commented that implementation will be difficult and he cannot imagine one LPHA doing all this work. Cara stated that implementation is tied to available funding and some work is already covered with existing funds.

Dawn stated that there is some funding offered to become accredited by the federal Public Health Accreditation Board, and if you are accredited you will be 70% covered on the foundational activities and services.

David asked if licensure activities are self-sustaining for collecting fees. Brad stated that in some counties they are. David indicated it could be difficult to choose between activities that don't pay for themselves and core public health functions. Shannon stated that this list contains activities in statute of what LPHA is supposed to do.

Greg inquired if restaurant inspection resources have a specific fund. Danna stated that the counties set the fees and remit a portion of those fees to the state. Brad stated what if other required work is not covered by funds. Danna answered then the work doesn't happen.

Fauna inquired about what happens if a LPHA doesn't perform these functions. Shannon said that in one part of the statute it says LPHA can do these activities as funding is available. LPHAs are supposed to do them but if they don't have money, they don't have to. Cara says it would also be addressed through the money exchanged in the FAA. David inquired in a situation where there isn't enough money if there will be a negotiation before a contract. Danna stated there is not one block of money, but instead many little blocks of money with a specific scope of work. OHA would negotiate contracts through the Tribal process, through OHA or CLHO for LPHAs. The Program Element is connected to a specific stream of money. If there is a change of funding level there is a conversation with CLHO to scale that work accordingly. Some activities are statutorily required with funding to support that work within the scope of work. Fauna stated there aren't any changes here but rather a different articulation. Danna said that this will ease an issue if counties don't have enough funding and will display the minimum they need to do. Muriel commented that if something happens in the community, public health must respond to outbreaks and events to ensure public safety. No one else does that to the degree that public health does. Even if funding doesn't happen, public health must step up when this happens for public safety as it is tied to governmental authority. Brad mentioned family planning is a required service so it is addressed in the FAA.

Foundational Program Prioritization 333-014-0550

Greg inquired about who determines the importance of each foundational program. Shannon stated that the county provides provisions in the FAA and it is a standard agreement with all counties although the dollar amounts may differ. Fauna recommended a change in the order of activities to eliminate any confusion. David stated that the Public Health Modernization Manual is well thought out but worries if there is not enough money to do all the foundational programs and capabilities. Dawn stated that there was a modernization assessment completed to prioritize these programs based on each county's capacity. The \$5M investment was selected to be directed towards communicable disease, since that was shown as the biggest need across all health departments.

Cara says there are two issues, first is the FAA which includes federal categorical funds. Secondly, if there are new state funds for Modernization, OHA doesn't anticipate enough money to do everything. This year OHA got feedback from PHAB and CLHO to inform those priorities. The legislature may also determine what dollars will be used for.

Rebecca recommended referencing base funding in this section. She also noticed this should be OAR 333-014-0550 rather than OAR 333-014-440. Shannon stated that not all activities are in 0550 and there are other rules for licensure. There is an argument for LPHA to provide services. There is a need to figure out how to articulate these issues.

Public Comment:

Pam Hutchison, Marion County Public Health Director commented regarding OAR 333-014-0550 (2) (d) *on providing immunizations under ORS 433.269*, which states that local health departments should make immunizations available in convenient areas and times. The Public Health Modernization Manual says *to ensure immunizations are provided in accordance with school law*. Pam suggests the language in the rules should align with the Public Health Modernization Manual here.

Closing

The meeting was adjourned.

The next Rules Advisory Committee meeting will be held on:

September 14, 2017

1:00 p.m. – 3:00 p.m.

Portland State Office Building

800 NE Oregon St., Room 918

Portland, OR 97232

If you would like these minutes in an alternate format or for copies of handouts referenced in these minutes please contact Angela Rowland at (971) 673-2296 or angela.d.rowland@state.or.us. For more information please visit the website: healthoregon.org/modernization