

Public Health Modernization rulemaking

Workgroup 1: Local public health authority, subcontracting of services, relinquishment

For July 31, 2017 Meeting

Reference documents:

- [Oregon Revised Statutes, Chapter 431](#)
- [HB 2310 B-Engrossed](#)
- [Public Health Modernization Manual](#)

Consider the following questions while reviewing the “Concepts for administrative rules” column:

1. What specific considerations do workgroup members want to see reflected in administrative rules for local public health authority, subcontracting of public health services and transfer of local public health authority?
2. Are there statutory requirements for local public health authority, subcontracting of public health services and transfer of local public health authority that do not appear to be addressed in this matrix?

	Statutory Reference	Concepts for administrative rules	Concepts for contractual requirements	Issues from 7/12/17 to be addressed	OHA Comments/Response
Local Public Health Authority	<p>ORS 431.413 Powers and duties of local public health authorities.</p> <p>ORS 431.131 through 431.138 Foundational capabilities</p> <p>ORS 431.141 through ORS 431.145</p>	<p>Adopt Public Health Modernization Manual (PHMM) by rule as PHMM describes roles and duties of local and state public health and was developed and revised collaboratively between state and local public health.</p> <p>If insufficient funding to perform all roles/duties in PHMM then description of minimum activities LPHA must perform</p>	<p>LPHA acceptance of funding through Financial Assistance Agreement program elements also obligates the county to activities outlined in the program elements.</p>	<p>Desire to specify that delegation includes funding.</p>	<p>Need legal clarification from DOJ as to whether county can terminate a delegation agreement.</p>

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		<ul style="list-style-type: none"> <li>• Accepting reports of communicable diseases, outbreaks or epidemics and investigating</li> <li>• Issuing or petitioning for isolation and quarantine orders</li> <li>• Review of immunization records</li> <li>• Providing or ensuring the provision of immunizations</li> <li>• Indoor Clean Air Act enforcement, if delegated</li> <li>• Ensuring access to family planning and birth control services</li> <li>• Licensure of tourist accommodations, recreational facilities, organizational camps, etc.</li> <li>• Restaurant licensure</li> <li>• Regulation of public water systems, if delegated</li> </ul>			
Delegation	<p>ORS 431.003(7) defines “local public health authority” to mean: (a) a county government; (b) a health district formed under ORS 431.443; or (c) an intergovernmental entity that provides public health services pursuant to an agreement under ORS 190.010.</p>	<p>Not for inclusion in rule, but this statute represents a change from prior to January 1, 2016 when local governments could delegate LPHA to a private entity.</p>	<p>Public Health Financial Assistance Agreements are between OHA and the Local Public Health Authority.</p>		

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Subcontracting of public health services	<p>ORS 431.413(3) "A local public health authority may contract with a person to perform a public health service or activity, or to perform all public health services and activities, that the local public health authority is required to perform under ORS 431.001 to 431.550 and 431.990 or under any other public health law of this state, except that the person with whom the local public health authority contracts may not perform any function, duty or power of the local public health authority related to governance.</p>	<p>If a LPHA contracts for public health services, identify governance functions that cannot be performed under contract, such as:</p> <ul style="list-style-type: none"> <li>• Exercising police power</li> <li>• Adopting ordinances, including licenses, fees, civil penalties, etc.</li> <li>• Conducting administrative hearings</li> <li>• Issues orders related to public health laws (such as require removal or abatement of a toxic substance on any property, restrict access to contaminated property, investigate violations of public health laws, etc.)</li> <li>• Accepting reports of reportable disease, disease outbreaks or epidemics and investigating</li> <li>• Compelling records during disease outbreak investigation</li> <li>• Petition court for isolation or quarantine order</li> <li>• Taking any action authorized during a public health emergency</li> </ul> <p>Identify specific information that must be in LPHA contract with a person to perform a public health service or activity such as:</p> <ul style="list-style-type: none"> <li>• Description of service to be performed and any applicable</li> </ul>	<p>Timeline for notifying OHA prior to contracting for service that was previously directly provided by LPHA</p> <p>Collaboration between OHA, LPHA and contractor to assure smooth transition and minimal disruption of services.</p> <p>Service transition communications plan.</p> <p>LPHA requirements for programmatic and fiscal monitoring of contractors for funds received through the financial assistance agreement.</p>	<p>CD Reporting is an area to be resolved. Current practice in counties in which subcontractor is doing the work, the subcontractor receives the report. Is there a difference between governance and a governmental function?</p> <p>Subcontracting – OHA review of subcontracts</p>	<p>Does not appear to be a difference between governance and governmental function, but OHA is looking at how best to address CD reporting in a way that makes it easy for this function to occur but also aligns with statutory mandates and appropriate oversight. OHA commits to address this in draft rules at which time counties and others will have opportunity to comment during RAC meetings, in writing or through public hearing testimony.</p> <p>The current financial assistance agreement (FAA) says that LPHAs must give OHA a copy of its subcontracts upon OHA's request.</p> <p>The FAA also has some requirements for the subcontractor's terms. OHA proposes that it will review these requirements and if there are changes that</p>

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		<p>laws, rules or ordinances that apply.</p> <ul style="list-style-type: none"> <li>• Description of how the LPHA will oversee and monitor the contractor</li> </ul> <p>Name LPHA's responsibility for reporting to Authority on implementation of foundational programs and other activities as required by financial assistance agreement.</p> <p>OHA ability to review contract between LPHA and public health services contractor</p>			<p>should be made (such as including specific program elements a subcontractor will be doing work for).</p> <p>In addition, OHA proposes adding to the FAA a requirement that the LPHA notify OHA in writing at least 75 days prior to the intended effective date of a new subcontract and that OHA may request that a subcontract be submitted to OHA for review at least 30 days prior to the proposed effective date of the subcontract). This would enable OHA to review a subcontract and inform the LPHA if there are provisions in the subcontract that would be in violation of the FAA between OHA and the county.</p> <p>OHA proposes to add in the FAA a requirement that when there is a substantial change in public health services, a communication plan for the transition/change must be</p>

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				<p>Assurance that funding will go to providing public health services.</p>	<p>developed by the LPHA in partnership with OHA and any subcontractor, if applicable, at least 60 days prior to the effective transition date.</p> <p>OHA proposes change to FAA that states that the funds provided to the county through the FAA are intended for the provision of the services for which the funding is received. Except where otherwise explicitly stated elsewhere in the FAA, any funds retained by the county to cover costs of administering the funds to a subcontractor of the county must be reasonable, as minimal as possible, and justifiable so as to assure the maximum amount of funds are being used for public health services. OHA may request to review a justification and accounting of funds retained by the county in a subcontracting situation as part of fiscal monitoring of the FAA.</p>

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				<p>Transfer all LPHA duties, not a subset of duties, and if the list of 10 minimum activities is the required list of what health departments must do.</p>	<p>Please note: any FAA changes will have to be vetted through an OHA/DHS/County Contracts work group which includes county counsels.</p> <p>LPHAs are required to implement what they have a contract for.</p> <p>OHA does not have rulemaking authority to specifically require any programs not already included in statute because of the available funding provision tied to the foundational capabilities and programs.</p> <p>OHA also don't have the authority to say that public health services must stay with the same subcontractor.</p>
Transfer of local public	HB 2310B Section 5	Transfer of all LPHA duties, not a subset of duties.			

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health authority		<p>If a LPHA transfers duties, OHA is not obligated to provide or to contract for the provision of public health programs and public health activities within the local public health authority's jurisdiction.</p> <p>Written notification to Public Health Director within two business days of ordinance adoption.</p> <p>Contract provisions, statutory requirements, etc. remain in effect until date of transfer. OHA may authorize termination of contract or agreement at an earlier date or the contract/agreement may be terminated in accordance with termination provisions of the contract/agreement.</p> <p>If transfer ordinance is revoked, OHA and LPHA will work on transition plan to transfer duties back to LPHA.</p>			