



AGENDA

RULES ADVISORY COMMITTEE

Relating to Passage of HB 3100 and HB 2310

September 14, 2017 1:00 pm – 3:00 pm

Portland State Office Building (PSOB), Room 1A

Call in Number: 877-873-8017 Participant: 767068

Rules Advisory Committee (RAC) Members: Annabelle Jaramillo (Benton County Commissioner), Christina Bodamer (American Heart Association), Courtney Vanbragt (Klamath County Public Health), Dawn Emerick (Clackamas County Public Health), David Bangsberg (Oregon Health Science University), Fauna Larkin (Coquille Indian Tribe), Gregory Miller (Yakima Valley Farm Workers Clinic), Henry Heimuller (Association of Oregon Counties Health and Human Services Committee), Jocelyn Warren (Lane County Health Department; Conference of Local Health Officials (CLHO) Representative), Cynthia Ackerman (AllCare), Ken Dukek (Curry Community Health), Liana Winett (Portland State University), Mark Bennett (Baker County Commissioner), Muriel DeLaverge-Brown (Crook County Health Department), Rebecca Pawlak (Oregon Association of Hospitals and Health Systems).

Meeting Objectives:

- Discuss revisions to the Local Public Health Administrator requirements, LPHA minimum activities and foundational capabilities and programs prioritization.
- Discuss proposed rules related to LPHA governance/subcontracting and transferring of LPHA.
- Review statement of need and fiscal impact

Agenda

1. Welcome and Introductions	1:00-1:10	<i>All</i>
2. Review Agenda and Meetings Plan	1:10-1:15	<i>Kim La Croix Oregon Health Authority</i>
3. Review 8/16 meeting and follow-up items	1:15- 1:45	<i>Kim La Croix</i>
4. Discuss Proposed Rule Language	1:45- 2:25	<i>Danna Drum/ Kim La Croix</i>
a. LPHA Contracts (333-014-0570)		
b. LPHA Governance (333-014-0580)		
c. Request to Transfer Local Public Health Authority (333-014-0590)		
5. Statement of Need and Fiscal Impact	2:25-2:35	<i>Kim La Croix</i>
6. Public Comment	2:35-2:50	
7. Review and Final Questions	2:50-3:00	<i>All</i>

Save the Dates:

Public Hearings November 27 in Medford, November 29 in Pendleton and December 4 in Portland

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

DIVISION 14 STANDARDS FOR STATE AND LOCAL PUBLIC HEALTH AUTHORITIES

333-014-0510

Definitions

As used in OAR chapter 333, division 14:

- () “Accountability metrics” means the public health system performance measures established by the Public Health Advisory Board under ORS 431.123.
 - () “Authority” means the Oregon Health Authority.
 - () “Base funds” means state funds appropriated by the Legislature to the Authority and distributed to LPHAs through the funding formula established in ORS 431.380(1)(a) for applying the foundational capabilities and implementing the foundational programs.
 - () "Enforcement" means an action taken to compel the requirements of the law.
 - () “Financial assistance agreement” or (FAA) means the contract entered into between the Authority and a LPHA through which base funds and other funds are distributed to LPHAs and which details the work a LPHA is required to perform in consideration of those funds.
 - () “Foundational capability” has the meaning given that term in ORS 431.003 and includes each capability established under ORS 431.131.
 - () “Foundational program” has the meaning given that term in ORS 431.003 and includes but is not limited to each program established under ORS 431.141.
 - () “Governing body of a local public health authority” has the meaning given that term in ORS 431.003.
 - () "Local public health administrator" has the meaning given that term in ORS 431.003.
 - () "Local public health authority" or “LPHA” has the meaning given that term in ORS 431.003.
 - () “Person” has the meaning given that term in ORS 174.100.
 - () “Public Health Advisory Board (PHAB)” means the body established under ORS 431.122 for the purpose of advising and making recommendations to the Authority and the Oregon Health Policy Board.
 - () "Public health law" has the meaning given that term in ORS 431A.005.
- Stat. Auth.: ORS 413.042, 431.149
Stats. Implemented: ORS 431.001 to 431.550

333-014-0520

Local Public Health Administrators

(1) An individual appointed by a LPHA to be the local public health administrator should have the following qualifications:

- (a) A bachelor’s degree; ~~and~~
- ~~(b) -and P~~public health work experience and education that demonstrates competencies in the ~~areas of biostatistics, epidemiology, environmental health sciences, health services administration and social and behavioral sciences relevant to public health; foundational programs as defined by ORS 431.141 and foundational capabilities as defined by ORS 431.131.~~
- ~~or~~
- ~~(b) Equivalent work experience with a federal, tribal, state or local public health authority.~~

(2) Upon appointment of a local public health administrator a LPHA must provide notice of the appointment to the Authority along with a copy of the administrator's resume or curriculum vitae.

(3) A LPHA ~~must~~ shall employ, full-time, a local public health administrator unless the Authority approves a LPHA's request to permit the administrator to work less than full time. To seek approval for a less than full-time local public health administrator the governing body of an LPHA must submit, in writing, a request for approval to the State Public Health Director with the following information:

(a) The number of hours per week the LPHA intends the administrator to work; and

(b) How the administrator, if working less than full-time, can fulfill the requirements in ORS 431.418(3).

(3) The Authority will inform the LPHA in writing whether the request to have a less than full-time administrator is approved or denied and the decision will be based on whether the Authority determines that the administrator can fulfill the requirements in ORS 431.418(3) working less than full-time.

Stat. Auth.: ORS 431.149

Stats. Implemented: ORS 431.170, 431.418

333-014-0530

Incentives and Matching Funds

(1) To the extent funds, above the base funds, are available, the Authority will make incentive and matching funds available to a LPHA in accordance with ORS 431.380(1)(b) and (c).

(2) Incentive funds may be awarded based on data that show achievement of benchmarks or improvement targets for accountability metrics.

(3) Matching funds may be awarded to a LPHA that invests in local public health activities and services above the base funding.

(4) OHA will review the accountability metrics data and local public health revenue and expenditures data submitted in accordance with OAR 333-014-0540, when making decisions regarding the award of incentives or matching funds. The data will be used to determine if the benchmarks, as recommended by PHAB, in the accountability metrics have been achieved, and the extent to which an LPHA has invested in local public health activities and services.

(5) Based on the information provided pursuant to section (4) of this rule, if funding is available, the Authority will include any incentives or matching funds in the FAA.

Stat. Auth.: ORS 431.149

Stats. Implemented: ORS 431.170, 431.418

333-014-0540

Accountability Metrics

(1) The Authority will ~~work~~ consult with the PHAB as necessary to identify, update and apply accountability metrics related to the distribution of incentive and matching funds.

(2) LPHAs will be consulted through the Conference of Local Health Officials (CLHO) on:

(a) ~~P~~Proposed changes to accountability metrics; and

(b) On the time, form and manner for reporting actual revenue and expenditure data and accountability metrics data to the the Authority.

(3) LPHAs will be notified of changes and updates to the accountability metrics when finalized by the PHAB.

(4) LPHAs are required to report actual revenue and expenditure data and accountability metrics data annually in a time, form and manner prescribed by the Authority, once the accountability metrics are finalized.

~~(5) LPHAs will be consulted through the Conference of Local Health Officials on the time, form and manner to report actual revenue and expenditure data and accountability metrics data to the the Authority.~~

Stat. Auth.: ORS 431.149

Stats. Implemented: ORS 431.380

333-014-0550

LPHA ~~Foundational Program Activities and~~ Minimum Activities Services

~~(1) To the extent that funding is available a LPHA must perform all the roles and duties described in the Public Health Modernization Manual (October 2017) adopted by reference, related to foundational programs and capabilities and the work specified in the FAA.~~

(12) The following are activities that Oregon law specifically requires a LPHA to perform if funding is not available to perform all the roles and duties described in the Manual a LPHA to perform must perform the following minimum activities:

(a) Accepting reports of reportable disease, disease outbreak or epidemics and investigating reportable diseases, disease outbreaks, or epidemics under ORS 433.004 and 433.006.

(b) Issuing or petitioning for isolation and quarantine orders under ORS 433.121 to 433.142 as necessary to protect the public's health.

(c) Review of immunization records and issuing exclusion orders under ORS 433.267.

(d) Providing immunizations under ORS 433.269.

(e) Indoor Clean Air Act enforcement under ORS 433.875, if delegated by the Authority.

(f) Ensuring access to family planning and birth control services under ORS 435.205.

(g) Licensure of tourist accommodations, including hostels, picnic parks, recreation parks and organizational camps under ORS 446.310 to 446.350, if delegated by the Authority.

(h) Licensure of pools and spas under ORS 448.005 to 448.100, if delegated by the Authority.

(i) Restaurant licensure, including commissaries, mobile units, vending machines and bed and breakfasts under ORS 624.310 to 624.430, if delegated by the Authority.

(j) Regulation of public water systems under ORS 448.115 to 448.285, if delegated by the Authority.

(k) Enforcement of public health laws under ORS 431.150.

(l) Perform the duties specified in ORS 431.413.

~~(23)~~ Nothing in this rule is intended to prohibit a LPHA from contracting with a person to perform a public health service or activity, or to perform all public health services and activities, that the LPHA is required to perform under ORS 431.001 to 431.550 and 431.990 or under any other public health law of this state, in accordance with OAR 333-014-0560, except that the

person with whom the LPHA contracts may not perform any function, duty or power of the LPHA related to governance, as that is described in OAR 333-014-0560.

Stat. Auth.: ORS 431.141

Stats. Implemented: ORS 431.141 to 431.145

333-014-0560

Foundational Capabilities and Programs; Prioritization

~~(1) If funds are not sufficient to implement and administer all aspects of the foundational programs, the FAA shall prioritize the duties and activities of each foundational program and the minimum activities described in OAR 333-014-0540(2).~~ (1) To the extent that funding is available a LPHA must have the local foundational capabilities and perform all the roles and duties the local foundational programs described in the Public Health Modernization Manual (October 2017) adopted by reference. ~~related to foundational programs and capabilities and the work~~

(2) The ~~specified in the FAA~~ will describe more specifically the duties and activities that are to be performed in order to carry out the local foundational programs.

~~(2) The LPHA must ensure that the duties and activities with the highest priority are carried out with the funds available.~~

(3) The Authority will consult with PHAB, as necessary, on priorities for foundational programs in ORS 431.141 and foundational capabilities in ORS 431.131.

Stat. Auth.: ORS 431.149

Stats. Implemented: ORS 431.380, 431.413

333-014-0570

LPHA Contracts or Agreements for Local Public Health Services or Activities

(1) A LPHA contract with a person to perform a public health service or activity must clearly describe the service or activity being performed, any applicable federal or state statutes or rules, or local ordinances that are applicable to the service or activity, and the manner in which the LPHA will oversee and monitor the contractor to ensure compliance with all applicable federal or state statutes or rules, local ordinances or other funding requirements as outlined in the FAA.

(2) If a LPHA contracts with a person, other than another LPHA, to perform a public health service or activity the Authority may request and review the contract between the LPHA and the person prior to its execution.

(3) If the LPHA intends to enter into an intergovernmental agreement with another governmental entity for the provision of local public health services or activities, it must provide written notice to the Authority at least 75 days prior to any agreement being executed.

(4) Notwithstanding any other provision in this rule, if an LPHA contracts with another LPHA to perform a public health service or activity, the LPHA shall provide written notice to the Authority at least 75 days prior to any agreement being executed, but is not required to comply with section (1) of this rule.

Stat. Auth.: ORS 431.149

Stats. Implemented: ORS 431.413

333-014-0580
LPHA Governance

Functions, duties and powers related to governance include the exercise of any police power and include but are not limited to:

- (1) Adopting ordinances, including fees, and other policies to promote and protect the public's health.
- (2) Enforcement of public health laws, including but not limited to taking an action on a license or permit as described in ORS 431.150.
- (3) Conducting administrative hearings.
- (4) Issuing any order authorized under ORS 431A.010 or ORS 433.
- (5) Imposing civil penalties.
- (6) Accepting reports of reportable disease, disease outbreak or epidemics and investigating such reports.
- (7) Compelling the production of records during a disease outbreak investigation.
- (8) Petitioning the court for an isolation or quarantine order under ORS 433.121 to 433.142.
- (9) Taking any action authorized during a declared public health emergency under 433.441.
Stat. Auth.: ORS 431.149
Stats. Implemented: ORS 431.413

333-014-0590
Request to Transfer Local Public Health Authority

- (1) If the Authority does not receive state moneys in an amount that equals or exceeds the estimate that the Authority submitted to the Legislative Fiscal Office under ORS 431.380(2) a LPHA may adopt an ordinance transferring the responsibility for fulfilling the LPHA's duties under ORS 431.001 to 431.550 and 431.990 and the other public health laws of this state to the Authority.
- (2) An ordinance adopted under section (1) of this rule may transfer all LPHA duties under ORS 431.001 to 431.550 and 431.990 and under other public health laws of this state but may not transfer only a subset of those duties.
- (3) The LPHA must inform the state Public Health Director in writing of adoption of an ordinance under section (1) of this rule within two business days from the date the ordinance was adopted and provide a copy of the ordinance.
- (4) The transfer of duties from a LPHA to the Authority takes effect no sooner than 180 days after the date the ordinance was adopted.
- (5) A LPHA must continue to comply with any contract or agreement with the Authority that concerns any of the services or activities required by a LPHA under these rules or under any other public health law of this state including but not limited to the FAA, until the date of transfer, unless the Authority authorizes a termination of a contract or agreement at an earlier date or the contract or agreement is terminated in accordance with the terms of the contract or agreement. The LPHA must provide notice to the Authority, in accordance with the termination provisions of any contract or agreement for local public health services prior to the transfer of authority.

(6) If a LPHA revokes an ordinance adopted under section (1) of this rule the Authority will work with the LPHA on a transition plan for the transfer of responsibilities back to the LPHA, on a schedule agreed upon by the Authority and the LPHA.

Stat. Auth.: ORS 413.042 & 431.149

Stats. Implemented: ORS 431.382

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority, Public Health Division

333

Agency and Division

Administrative Rules Chapter Number

Standards for State and Local Public Health Authorities

Rule Caption

In the Matter of: Amending OAR chapter 333, division 14, relating to the implementation of Oregon's public health modernization.

Statutory Authority: ORS 413.042, 431.149, 431.141

Other Authority:

Stats. Implemented: ORS 431.001 through 431.550

Need for the Rule(s):

In this rulemaking, the Oregon Health Authority (Authority) is repealing and replacing public health administrative rule to comply with statutory changes from the passage of House Bill 3100 (Oregon Laws 2015, chapter 627) and House Bill 2310 (Oregon Laws 2017, chapter 736) and to establish the rules and procedures for implementing Public Health Modernization.

The proposed rulemaking:

1. Amends and adds definitions to bring the rules into line with public health modernization, better reflect the purpose of the statute, and/or add clarity to the rules.
2. Codifies recommended qualifications for a local public health administrator.
3. Establishes local public health authority funding formula (base level, matching funds and incentive payments) for new state dollars appropriated for public health modernization. Clarifies the process by which information will be collected for matching and incentive funds to be allocated to local public health authorities.
4. Clarifies requirements and procedures for the use of accountability metrics to track progress toward public health modernization.
5. Describes the activities a Local Public Health Authority (LPHA) must perform.
6. Incorporates the Public Health Modernization Manual into rule.
7. Prioritizes implementation and administration of the foundational programs and capabilities described in the Public Health Modernization Manual with the funds available for a LPHA.
8. Establishes requirements for LPHA contracts or agreements for local public health services or activities.
9. Clarifies that private entities cannot perform functions related to governance, such as exercising police powers in public health emergencies, adopting ordinances, and conducting administrative hearings.
10. Specifies the circumstances when a LPHA could transfer authority back to the state and clarifies the process for transferring authority.

Documents Relied Upon and Where They Are Available:

1. Oregon Revised Statutes 431.001 through 431.550
https://www.oregonlegislature.gov/bills_laws/ors/ors431.html
2. Oregon Administrative Rules 333-014-0040 through 333-014-0100
http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_014.html
3. HB 3100: <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3100/Enrolled>
4. HB 2310: <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2310/Enrolled>
5. Public Health Modernization Manual:
http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf

Fiscal and Economic Impact:

The Authority is responsible for developing and approving the local public health funding formula and submitting it to the Public Health Advisory Board (PHAB) and Legislative Fiscal Office.

The funding formula has three components:

1. Base level: applied to all LPHAs; includes factors such as population size and the burden of disease and health status of the county..
2. Matching funds: provides additional funds, beyond the base level, designed to incentivize county investment in foundational capabilities and programs.
3. Incentive payments: provides additional funds, beyond the base level, related to achievement of accountability metrics for the efficiency and effectiveness of the programs provided.

The PHAB recommended that no matching funds for local investment in public health or incentive payments be provided to LPHAs in the 2017-2019 biennium so that LPHAs can utilize the entire legislative investment to begin the first phase of public health modernization implementation. In future biennia, if funding is allocated for public health modernization, counties that invest in foundational programs and capabilities, and therefore eligible for matching funds, or counties that achieve performance on accountability metrics could receive additional funds. This may result in improved health outcomes and health savings for their residents.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The administrative rule revisions are not expected to increase implementation costs for LPHAs. LPHA staff time to collect and submit expenditures for required reporting of actual revenue and expenditure data and accountability metrics data annually may minimally increase costs but are required in order to receive incentive and matching funds. However, it is a standard operating procedure for LPHAs to submit budget data to the Authority as part of requirements for the annual plan, which is repealed in this rulemaking.

There may be substantial costs to the Authority if a LPHA adopts an ordinance transferring the responsibility for fulfilling the LPHA's duties to the Authority. The Authority 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. However, OHA may assume LPHA duties and as a result may incur significant costs for state staff to implement the activities that Oregon law specifically requires (OAR 333-014-0550) as well as foundational programs (ORS 431.141).

The compliance costs related to a transfer of authority may include: personnel expenses such as salaries and fringe benefits, training costs, travel expenditures (dependent on proximity of LPHA to the Authority), legal fees, and communication initiatives such as outreach and notification to residents in the LPHA that would be impacted by change in service delivery. Duties such as enforcing public health laws (e.g. restaurant inspections) are especially labor intensive and would have a fiscal impact on the Authority.

If a transfer occurs there may be a cost to the public (e.g. medical expenses) because of reduced public health services in the LPHA's jurisdiction. Because the Authority is not obligated to provide or to contract for the provision of public health programs and public health activities within the LPHA's jurisdiction, the Authority cannot guarantee adequate provision of public health services, or related fiscal impacts, in a LPHA that has transferred their duties to the Authority.

2. Cost of compliance effect on small business (ORS 183.336): (ORS 183.310(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.)

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The rule applies all 34 LPHAs in Oregon. No LPHAs meet the definition of a small business. Therefore, none of Oregon's small businesses (approximately 100,000) are the subject to the rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services (per business):

No additional reporting, recordkeeping other administrative activities by private businesses are projected.

c. Equipment, supplies, labor and increased administration required for compliance (per business):

No additional equipment, supplies, labor or increased administration is expected.

How were small businesses involved in the development of this rule?

The 2017 Public Health Modernization Rules Advisory Committee included representatives from voluntary health organizations and non-profit public health organizations which may be classified as a small business under Oregon law.

Administrative Rules Advisory Committee consulted? Yes.

Rules Advisory Committee membership included the following:

- Public health (Conference of Local Health Officials (CLHO) members, Local Public Health Authority and tribal administrators);
- Voluntary organizations (American Heart Association, Oregon Association of Hospitals and Health Systems);
- Academia (Oregon Health and Science University, Portland State University);
- Coordinated Care Organizations (AllCare);
- Department of Justice;
- Health care providers (Yakima Valley Farm Workers Clinic); and
- Elected officials (County Commissioners)

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007