

Meeting Notes

WORK GROUP MEETING

Relating to Passage of HB 3100 and HB 2310

Public Health Modernization

Local public health authority, subcontracting of services, relinquishment

July 12, 2017 2:30 pm – 4:30 pm
Portland State Office Building (PSOB), Room 1D

Attendees by webinar: Jay Bozievich (Commissioner Lane County), Carrie Brogiotti (Union County Center for Human Development), Muriel DeLavernge-Brown (Crook County Public Health), Charlie Fautin (Benton County Public Health), Alex Tardiff (Commissioner Columbia County).

Attendees in person: Ken Dukek (Curry Community Health), Shannon O’Fallon (Oregon Department of Justice), Rebecca Pawlak (Oregon Association of Hospitals and Health Systems).

Oregon Health Authority staff: Cara Biddlecom, Danna Drum, Kim La Croix.

Observers in person: Morgan Cowling (Conference of Local Health Officials-CLHO).

Observers on the phone: Sherrie Ford (Columbia County Public Health Network), Dan Herman (211 Info), Kellen McKinney (Douglas County Public Health Network).

Welcome and Overview of Rulemaking Process

- The meeting was convened by Danna Drum at 1:00 p.m. with a welcome, information about call-in, meeting recording and logistics.
- The purpose of the work group meeting was shared, specifically, to address rulemaking for the passage of HB 2310 (2017) and HB 3100 (2015) and implement the Future if Public Health Task Force recommendations on a new framework for public health. The framework is centered on foundational capabilities and foundational programs that are essential in every community and for every person in order to protect and improve health in Oregon.
 - HB 3100: Adopted the public health modernization framework and put in place requirements for an assessment and plan.
 - HB 2310: Passed unanimously out of the House and Senate during the 2017 Legislative Session and is awaiting the Governor’s signature. HB 2310 made adjustments and modifications to what passed in HB 3100, for how public health modernization will be implemented, including clarifying the circumstances when a local public health authority could transfer authority back to the state, local public health authority and subcontracting of public health services.
- The role of the work group was described.

- Committee members were selected to provide expertise and advice in rule making. OHA staff in attendance have content expertise. In particular this work group has members who represent counties with unique structures that OHA wants to take into consideration when developing rules.
- Observers are welcome to attend, and may participate in the meeting outside of the established public comment period pending approval by the work group and facilitator.

Review Agenda and Meeting Plan

- Danna Drum reviewed the agenda for the current meeting, indicating that today's work group meeting will cover local public health authority, subcontracting of public health services and delegation. A second workgroup will address health department funding formula, accountability metrics and incentive payments. The Rules Advisory Committee (RAC) will review the components in Work Groups 1 & 2, as well as the Statement of Need and Fiscal Impact for the proposed rules.
- After the last of the RAC meetings, there will be official proposed rules, which are then open to public comment. There will also be public hearings in Portland, Medford and Pendleton.
- Final rules will most appropriately serve the intent and purpose of the statute, as determined by OHA, while taking in to account feedback and advice. Rules will be in effect January 1, 2018.

Overview of related statutes, concepts for administrative rules and concepts for contractual requirements. See the meeting materials for more information:

<http://www.oregon.gov/oha/ph/About/TaskForce/Pages/index.aspx>

- The majority of the meeting time was spent considering the [matrix](#) handout showing what's in statute, and what OHA anticipates will be in rule and in contract.

Local Public Health Authority

- OHA frequently gets asked about required public health services. Required services means foundational programs and capabilities outlined in the Public Health Modernization Manual (PHMM). The manual will be adopted by rule and will have the same legal authority as rule.
- The overall statutory framework has changed so much over the past two years that almost entirely new rules will be promulgated. Any changes to the manual will require a rule-making process.
- If there are insufficient funding to perform all roles/duties, the minimum activities an LPHA must perform are:
 - Accepting reports of communicable diseases, outbreaks or epidemics and investigating
 - Issuing or petitioning for isolation and quarantine orders

- Review of immunization records
 - Providing immunizations
 - Indoor Clean Air Act enforcement, if delegated
 - Ensuring access to family planning and birth control services
 - Licensure of tourist accommodations, recreational facilities, organizational camps, etc.
 - Restaurant licensure
 - Regulation of public water systems, if delegated
- Recommendation to add that “delegation” should include funding.

Delegation

- Clarification that providing immunizations means assuring the provision of immunizations. The difference between providing and assuring depends on the local community need (e.g. some communities do not have robust primary care services).
- HB 3100 clarified that LPHA means a county government, health district or an intergovernmental entity that provides public health services. Because authority can no longer be delegated, the contract needs to be with the county and OHA. 3-way agreements (between a county and private entity and OHA) are no longer allowed.
 - A hospital district is separate from a district referred to in Public Health statutes. It is unclear if any hospitals have been formed under ORS 190.010.

Subcontracting of public health services

- Some LPHAs are in contractual arrangements to provide public health services. HB 3100 clarified that private entities cannot perform functions related to governance, such as exercising of police powers in public health emergencies, adopting ordinances, and conducting administrative hearings.
- Subcontractors need safeguards for the contracted entity. Recommendation to include limitations in rule-making (e.g. turn in reports in a certain amount of time).
 - There was concern around “accepting reports of reportable disease, disease outbreaks or epidemics and investigating” having to be done by the LPHA/county.
 - These activities may be a governmental function but not an oversight function. There is a difference between governmental function and governance.
 - It may not be appropriate for private parties to do Communicable Disease (CD) work because police powers are a governmental function. Currently some private entities are doing CD investigations and reporting.
 - Recommendation to have clarification around “what accepting reports” means.

- It is a gray area on whether designees for reportable diseases could be a sub-contractor.
- Some functions of licensure could be done by a private entity such as investigation. Other functions must be done by the government.
- Some counties are hiring a part-time administrator to comply with what's in statute.
- Because of new statutory language Financial Assistance Agreements must be between the OHA and the County.
- Recommendation that the contract be very specific (e.g. including the program elements and applicable ORS) and include a universal set of requirements for a sub-contractor.
- Discussion on whether or not OHA should review subcontracts.
 - What level of review would be necessary?
 - Would there be any unintended consequences?
 - Should OHA only review the relevant portions or establish a threshold?
 - OHA review may add extra time and there are already legal sufficiency reviews from local jurisdictions.
 - Recommendation to change "shall" review to "may."

Transfer of local public health authority

- Question regarding if the county should notify OHA when they enter into a sub-contracting relationship, especially when there may be a disruption of services.
 - Notification is reasonable. However, notification may occur at the same time the actual contract is being constructed/negotiated.
- The Triennial Review for local health departments may look different when public health services are contracted for services. The county is responsible for the monitoring of their contractor.
- Clarification request regarding if it is possible to 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.
 - OHA will continue to look at the statutory minimum activities a LPHA must perform (if there is insufficient funding) and how these activities fit with the foundational programs and capabilities described in the Public Health Modernization Manual (PHMM).
 - LPHAs are required to implement what they have a contract for.

Next Meeting Agenda:

- The next meeting will be 7/31 and will review governmental CD requirements, safeguards for subcontracting and information about governance and governmental function.



Meeting adjourned at 3:00 p.m.