

Public Health Modernization Administrative Rules Overview



**ADMINISTRATIVE
RULES**

January 2018



Oregon
Health
Authority

PUBLIC HEALTH DIVISION

Office of the State Public Health Director

Objectives

- Review the statutory changes from the passage of HB 3100 (2015) and HB 2310 (2017).
- Understand how the new rules impact the Oregon public health system
 - Including contracts, funding formulas, accountability metrics, local public health authority (LPHA) statutory requirements and governance functions.
- Discuss the benefits and challenges for implementing new rules.

Presentation outline

- Background
- Rule-making process
- Rule components/summary of changes
- Operationalizing the changes
- Question and answer

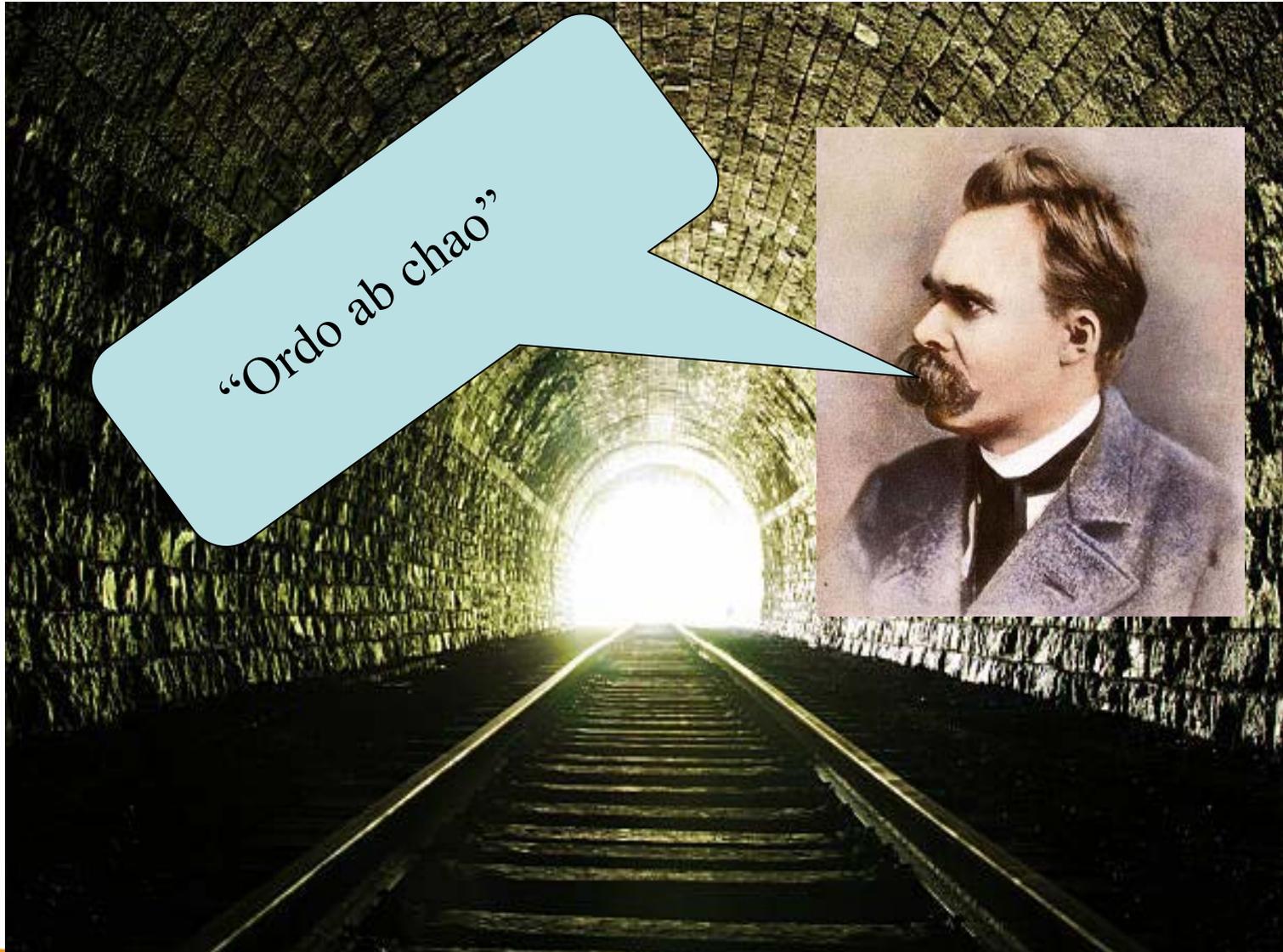


Rule text, matrix and power available at www.healthoregon.org/modernization

Public Health Modernization Administrative Rules

- [OAR 333-014: Standards for State and Local Public Health Authorities](#)
- [Rulemaking Summary, January 2018](#)

Friedrich Nietzsche [1844-1900]

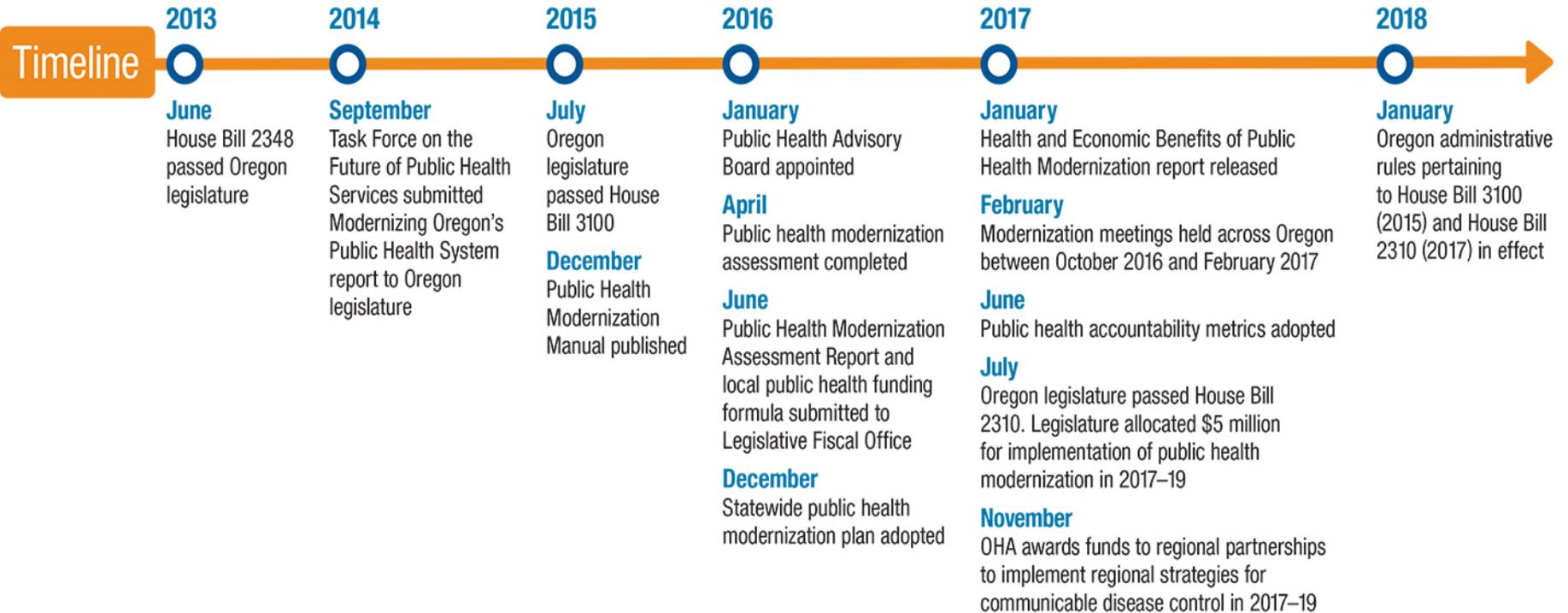


Start with the soup

- OAR: Oregon Administrative Rule
- ORS: Oregon Revised Statute
- RAC: Rules Advisory Committee
- LPHA: Local Public Health Authority
- CLHO: Conference of Local Health Officials
- PHAB: Public Health Advisory Board
- FAA: Financial Assistance Agreement (between OHA and an LPHA)
- IGA: Intergovernmental Agreement (between two or more governmental entities)

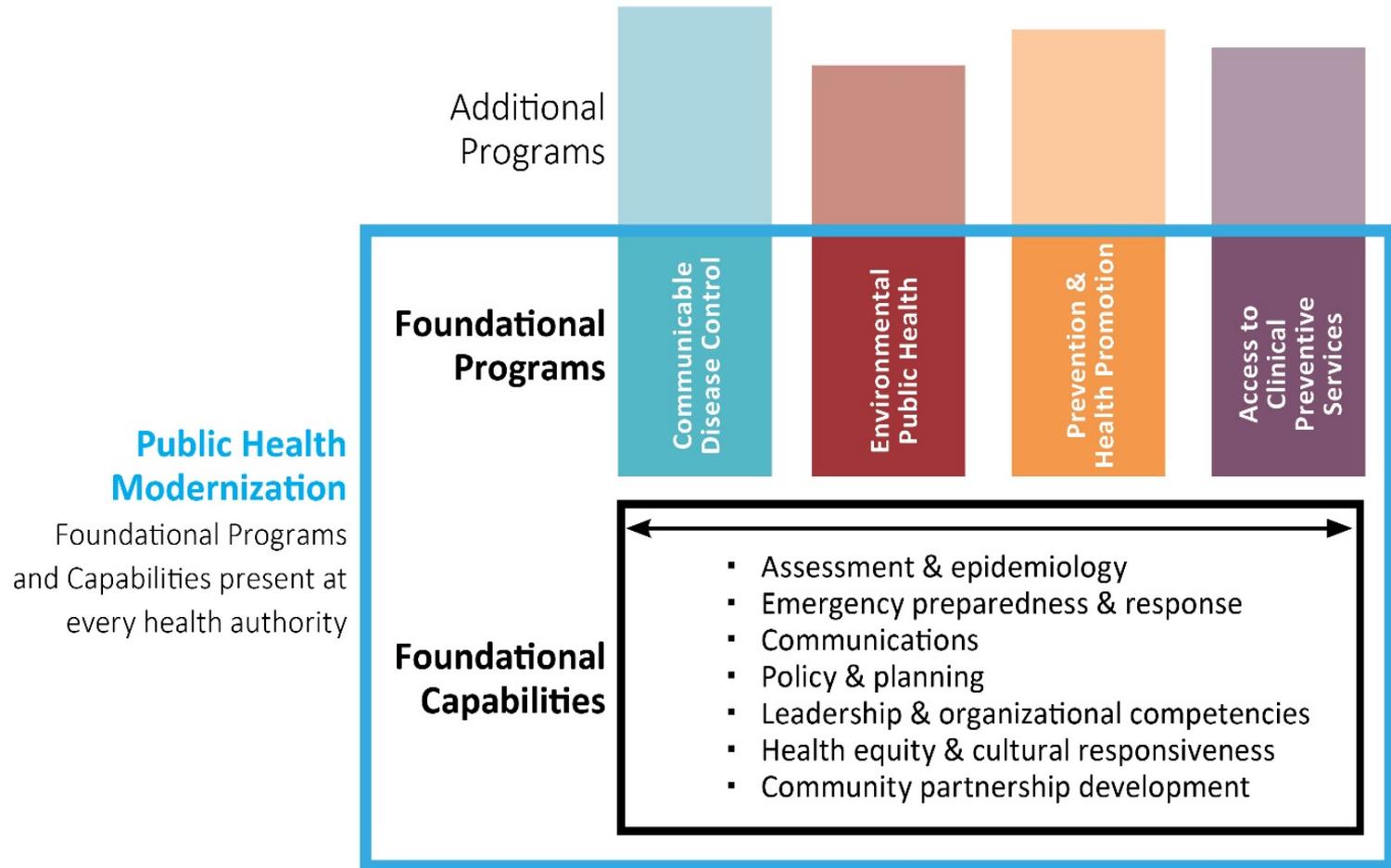


Public health modernization timeline



OHA 8717L (1/18)

Public health modernization framework



House Bill 3100 (2015)

- Legislators used the recommendations from the *Modernizing Oregon's Public Health System* report to introduce House Bill 3100.
- House Bill 3100 operationalizes many of these recommendations over the period of 2015-2017. Specifically, the bill:
 - Adopts the foundational capabilities and programs for governmental public health.
 - Changes the composition and role of the Public Health Advisory Board beginning on January 1, 2016.
 - Requires the Oregon Health Authority's Public Health Division and local public health authorities to assess their current ability to implement the foundational capabilities and programs; and requires the Public Health Division to submit a report on these findings to the legislature by June 2016.
 - States that local public health authorities shall submit plans for implementing the foundational capabilities and programs no later than December 2023.

House Bill 2310 (2017)

- Modifies the process by which foundational capabilities will be applied and foundational programs will be implemented.
- Directs OHA to establish accountability metrics.
- Clarifies the local public health funding formula is limited to moneys made available by the state to OHA for funding foundational capabilities and programs, and gives OHA the authority to distribute funds through means other than the local public health funding formula.
- Requires OHA to submit a biannual report to Legislative Fiscal Office and the Public Health Advisory Board.
- Adds a Public Health Advisory Board member who is a member or representative of Oregon's federally recognized tribes.
- Establishes requirements for county relinquishment of public health authority.

Rule-making process

- 2 workgroups met in July
- 2 RAC meetings were held in August and September
- 3 public hearings (Medford, Pendleton, Portland) in November and December
- 5 official comments submitted by LPHAs or CLHO
- 1/1/2018 final rule effective date

Stakeholders

- The RAC roster consisted of representatives from:
 - Public health (CLHO members, LPHA and Tribal staff, PHAB);
 - 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);
 - Federally qualified health centers;
 - County Commissioners;
 - County Counsel;
 - Department of Justice; and
 - Non-profit public health organizations (Curry Community Health).

Rule components

- Definitions (OAR 333-014-0510)
- LPHA administrator requirements (OAR 333-014-0520)
- Incentives and matching funds (OAR 333-014-0530)
- Accountability metrics (OAR 333-014-0540)
- LPHA statutory responsibilities (OAR 333-014-0550)
- Public Health Modernization Manual (OAR 333-014-0560)
- Subcontracting (OAR 333-014-0570)
- Governance (OAR 333-014-0580)
- Transferring authority (OAR 333-014-0590)

Definitions

OAR 333-014-0510

Key definitions related to public health modernization include:

- “Accountability metrics”
- “Base funds”
- “Foundational capability”
- “Foundational program”
- “Local public health authority”
 - (a) A county government;
 - (b) A health district formed under ORS [431.443 \(Formation of health districts\)](#); or
 - (c) An intergovernmental entity that provides public health services pursuant to an agreement entered into under ORS [190.010 \(Authority of local governments to make intergovernmental agreement\)](#) (5). [2015 c.736 §2]
- “Public Health Advisory Board (PHAB)”

Local Public Health Administrators

OAR 333-014-0520

- Recommended qualifications:
 - Bachelor's degree; and
 - Public health work experience and education that demonstrates competency in the foundational programs and foundational capabilities.
- Must inform OHA-PHD of new appointments and include resume and CV.
- Shall employ 1 FTE unless OHA-PHD approves less than FTE.
 - LPHA submits request, in writing, that includes
 - # of hours per week
 - How the LPHA will meet the requirements of a LPHA administrator if working less than full-time
 - OHA-PHD makes the determination

Public Health Officer

ORS 431.418(2)

- If the local public health administrator is a licensed physician they shall also serve as the local health officer for the LPHA.
- When the local public health administrator is not a licensed physician the LPHA shall employ or contract for services with a local health officer
- The local health officer is responsible to the local public health administrator for the medical and paramedical aspects of the public health programs administered by the local public health administrator.

Health Officer

- The health officer **must be connected to the LPHA** through a written agreement indicating the relationship between the health officer and the LPHA.
 - Health officer may have many roles outside of the LPHA (e.g. medical director for a sub-contractor of the LPHA, primary care provider)
 - When acting from the health officer role it needs to be clear that they are acting as part of the LPHA (e.g. petition the court of a quarantine order).
- The LPHA **cannot delegate selection** of health officer to a contractor.

Distribution of funds

ORS 431.380

- HB 3100 put in place public health funding formula for new state funds for public health modernization.
 - OHA 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 in June of every even-numbered year.
 - PHAB advises on the funding formula.
- The formula has 3 components:
 - Base level: includes the health status of the county, population size, and capacity to invest in public health.
 - The PHAB determined that all 2017-19 funds go to base funding.
 - Matching funds: provides additional funds designed to incentivize county investment in foundational capabilities and programs.
 - Incentive payments: related to achievement of accountability metrics for the efficiency and effectiveness of the programs provided.

Incentives and Matching Funds

OAR 333-014-0530

- To the extent funds, above the base funds, are available, the Authority will make incentive and matching funds available to a LPHA.
- Incentive \$: related to achievement of accountability metrics for the efficiency and effectiveness of the programs provided.
 - Incentive funds may be awarded based on data that show achievement of benchmarks or improvement targets for accountability metrics.
 - Process measures are the operational mechanism
- Matching \$: provides additional funds designed to incentivize county investment in foundational capabilities and programs.
 - May be awarded to an LPHA that invests in local public health activities and services above the base funding.



Incentives and Matching Funds

Continued *OAR 333-014-0530*

- OHA will review the accountability metrics data and local public health expenditures data submitted 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.
- If funding is available, the Authority will include any incentives or matching funds in the FAA or other agreements.

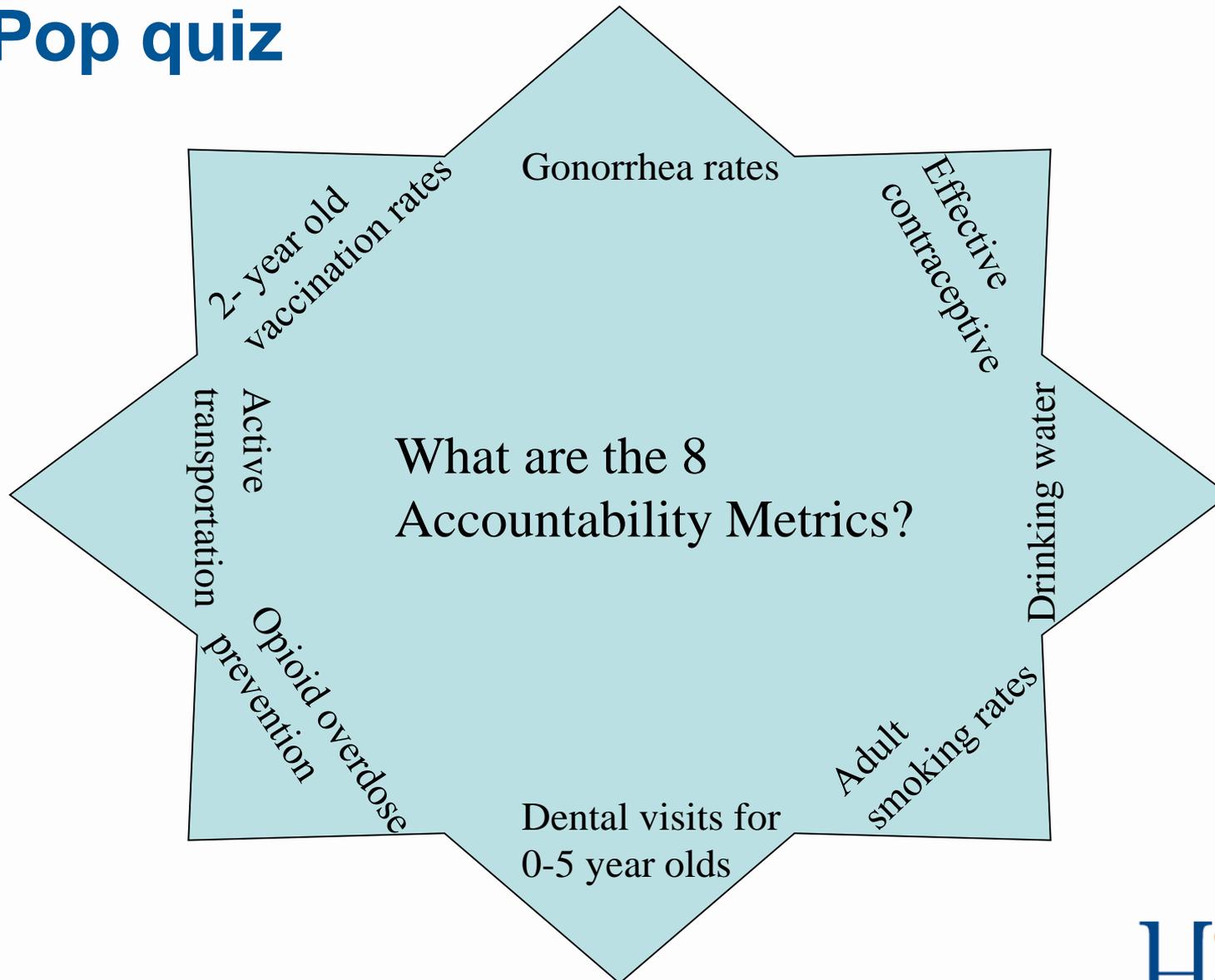


Accountability Metrics

OAR 333-014-0540

- OHA consults with PHAB to identify, update and apply accountability metrics related to the distribution of incentive and matching funds.
- LPHAs will be consulted through CLHO on:
 - (a) Proposed changes to accountability metrics; and
 - (b) On the time, form and manner for reporting actual expenditure data and accountability metrics data to the Authority.
- LPHAs will be notified of changes and updates to the accountability metrics when finalized by the PHAB.
- LPHAs are required to report actual expenditure data and accountability metrics data annually in a time, form and manner prescribed by the Authority
 - Only applies if the primary data available to report is by the LPHA and once accountability metrics are finalized.

Pop quiz



LPHA Statutory Responsibilities

OAR 333-014-0550

1. Accepting reports of reportable disease, disease outbreak or epidemics and investigating reportable diseases, disease outbreaks, or epidemics.
2. Issuing or petitioning for isolation and quarantine orders.
3. Review of immunization records and issuing exclusion orders.
4. Making immunizations available (means ensuring the provision).
5. Duties and activities related to enforcing the ICAA, if delegated by OHA
6. Ensuring access to family planning and birth control services.
7. Licensure of tourist accommodations, including hostels, picnic parks, recreation parks and organizational camps, if delegated by OHA.
8. Licensure of pools and spas, if delegated by OHA.
9. Restaurant licensure, including commissaries, mobile units, vending machines and bed and breakfasts, if delegated by OHA.
10. Regulation of public water systems, if delegated by OHA.
11. Enforcement of public health laws under ORS 431.150.
12. The duties specified in ORS 431.413 (PH modernization foundational programs and capabilities).

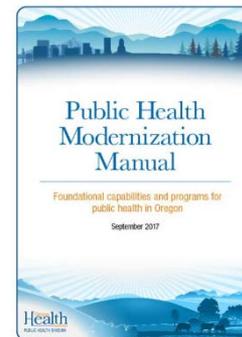
10 mandated programs no longer apply

1. Communicable Disease Investigation and Control
2. Tuberculosis Case Management
3. Immunizations
4. Environmental Health Services
5. Tobacco Prevention
6. Emergency Preparedness
7. Maternal and Child Health Services
8. Family Planning
9. Women Infants and Children Services
10. Vital Records

Foundational Capabilities and Programs; Prioritization

OAR 333-014-0560

- To the extent that funding is available, an LPHA should implement the local foundational capabilities and the local foundational programs described as the local roles and deliverables in the Public Health Modernization Manual, available at:
http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf
- The FAA, or other agreements, describe more specifically the duties and activities that are to be performed in order to carry out the local foundational programs.
- The Authority will consult with PHAB on priorities for foundational programs and foundational capabilities.



LPHA Contracts or Agreements for LPHA Services or Activities

OAR 333-014-0570

- LPHAs can contract for public health services but cannot contract for governance functions.
- LPHA must notify OHA at least 75 days in advance prior to executing a NEW contract
 - OHA may request a copy for review
- A LPHA contract or IGA must clearly describe:
 - The service or the activity being performed;
 - Any applicable federal or state statutes or rules or local ordinances applicable to the activity; and
 - How the LPHA will oversee and monitor the contract.
- If the LPHA cannot provide the 75 days notice, the LPHA shall provide notice as soon as possible before or after contract execution.

Exceptions

- 75-day Notice requirement does not apply to:
 - Administrative contracts or contracts that do not have a direct impact on consumers of public health services or activities (e.g. billing, evaluation or facilitator contracts).
 - Work in the FAA or other agreements between an LPHA and OHA that does not change how the LPHA delivers services
 - Subcontracts that do not have any connection to LPHA-OHA agreements
 - Local general fund dollars

PHD will issue guidance on the exceptions by 1/31

The Notice and any questions determining what types of contracts need to comply with this requirement should be directed to **Danna Drum**.

Governance

As provided in ORS 431.413(3) and ORS 190.110, a local public health authority may contract or enter into an agreement with an entity to perform public health services or activities but that entity may not perform any function, duty or power of the local public health authority related to governance.

LPHA Governance

OAR 333-014-0580

- The exercise of any police power
- Any duty of the governing body of a local public health authority under ORS 431.415
- Enforcement of public health laws, including but not limited to taking an action on a license or permit
- Ensuring due process for persons with due process rights
- Issuing any order authorized under ORS 431A.010 or ORS 433.
- Imposing civil penalties
- Compelling the production of records during a disease outbreak investigation
- Petitioning the court for an isolation or quarantine order
- Taking any action authorized during a declared public health emergency

Examples of LPHA governance functions

1. Environmental health functions such as issuing licenses or other orders (e.g. cease and desist orders for non-compliant restaurants).
 - a. Another entity may do restaurant inspections but only the LPHA may issue licenses, civil penalties or other orders.

2. School exclusion orders for lack of immunizations records, exclusions from work or school due to communicable disease.
 - b. Another entity may run the reports but only the LPHA may enforce the orders.

3. Petitioning the court for quarantine for tuberculosis.
 - c. Another entity may test and treat someone with TB but only the LPHA can petition for a quarantine order.

Transferring Local Public Health Authority

OAR 333-014-0590

- “Relinquishment” statute was repealed by HB 3100
- Specifies the circumstances when an LPHA could transfer local public health authority to the state.
- Clarifies the process for transferring local public health to the state.
- Sets out a process for transferring authority back to the local public health authority.

Transferring Local Public Health Authority

ORS 431.382

- If the Oregon Health Authority fails to distribute an amount of moneys to a local public health authority equal to or in excess of the baseline amount established under ORS 431.380, a local public health authority may request to transfer responsibility for fulfilling the local public health authority's duties.
- If a local public health authority requests to transfer responsibilities under this section, the moneys available to the local public health authority under ORS 431.380 revert to the Oregon Health Authority.

Request to Transfer Local Public Health Authority

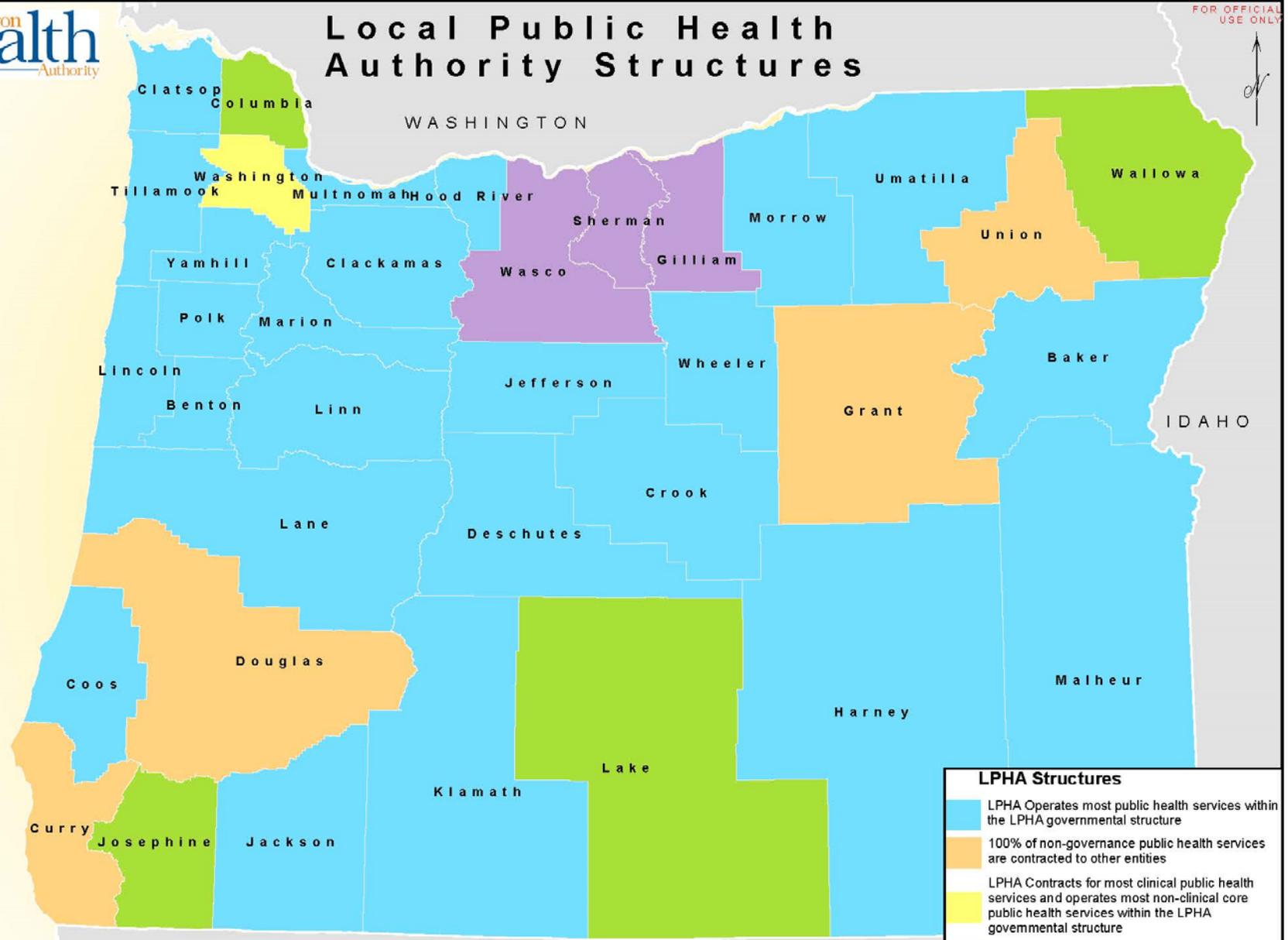
OAR 333-014-0590

- **If OHA does not receive funds** that equal or exceed estimates for implementation of public health modernization **an LPHA may transfer duties**, not a subset, of duties to the OHA.
- **Written notification** to the PHD Director within **two business days** of ordinance adoption is required from the LPHA and **takes effect no sooner than 180 days** after the date or the ordinance was adopted.
- If an 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 LPHA jurisdiction.
- Contract provisions and statutory **requirements** (which are tied to the foundational programs and capabilities) **remain in effect until the date of transfer.**

Operationalizing the changes

- Accountability metrics
 - Actual LPHA expenditure reporting
 - Process measures
- Subcontracting
 - Two-party agreements vs. three party agreements
 - Updates to PEs
 - Guidance to LPHAs (e.g. notice requirement for subcontracting)
- Governance
 - Support to LPHAs considering new models for delivering public health services
- Internal policy and procedures for:
 - Transferring authority from the LPHA to OHA
 - Sub-contracting for public health services or activities
 - Transferring property and equipment

Local Public Health Authority Structures



LPHA Structures

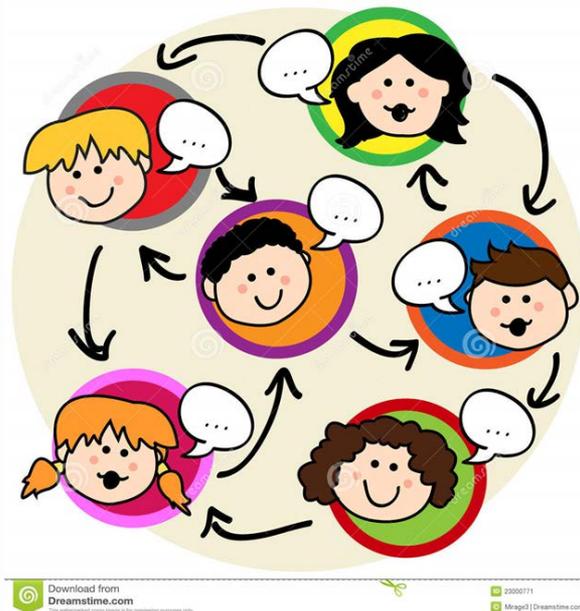
- LPHA Operates most public health services within the LPHA governmental structure
- 100% of non-governance public health services are contracted to other entities
- LPHA Contracts for most clinical public health services and operates most non-clinical core public health services within the LPHA governmental structure
- Cross Jurisdictional Health District
- LPHA currently in transition (see note on left)

Note: Josephine and Lake counties currently operate most public health services within the LPHA governmental structure. Josephine is moving towards a "yellow" model while Lake is moving towards an "orange" model. Columbia county currently contracts 100% of non-governance public health services to other entities. It is unclear in which direction they are moving.



Discussion

1. How do the new rules impact your work?
2. What else would be helpful?



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Questions



Thank you!

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