



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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TO: Commissioner Monica Bharel, MD, MPH and Members of the Public Health Council

FROM: Sondra M. Korman, Deputy General Counsel

DATE: January 10, 2018

RE: Summary of delegations of authority to Commissioner from the Public Health Council ("PHC")

This memorandum is intended to provide council members with a summary of six Department functions and duties that currently do not require PHC approval because the council either delegated its statutory authority to the Commissioner or deemed the Commissioner's decisions to be approved. The PHC's duties and responsibilities, as set forth in M.G.L. c. 111, §3, do not include "administrative or executive" functions. The delegation of the following six Department functions enable council members to focus their time and attention on other responsibilities while providing the Department with a more efficient and timely process for carrying out its regulatory and operational functions.

Given the changes in PHC membership over the years, Department staff respectfully request that the PHC confirm and renew approval of each of the following determinations which have been previously delegated to the Department:

1. Authority to approve licenses for facilities and entities

The PHC voted to delegate to the commissioner (or designee) its authority to approve initial and renewal licenses for facilities and entities subject to the Department's licensing authority. (e.g., hospitals, clinics, long-term care facilities, EMTs and ambulance services, substance abuse treatment centers).

2. Authority to issue final decisions when respondent fails to appeal a notice of agency action or withdraws the appeal

Various Department programs commence notices of agency action against regulated parties or entities to enforce its regulations (e.g., revocation of emergency medical technician certification, suspension of permit to process or distribute food for sale at wholesale). The PHC delegated to the Department the authority to approve final agency decisions in administrative actions where the licensee-,respondent fails to request an adjudicatory hearing or withdraws the hearing request.

3. Approvals and amendments of bylaws governing the four public health hospitals

The Public Health Hospital organizational bylaws, as formerly drafted, contained a provision that required PHC approval before making any changes to the bylaws. These by-laws govern the organizational and administrative structure of the four Department-operated hospitals. The PHC delegated this authority to the commissioner.

4. Approvals of Final Agency Decisions in Adjudicatory Cases

The PHC delegated to the commissioner its authority to review and approve tentative decisions issued by the administrative magistrate who presided over the case. The commissioner submits biannual reports (January and July) to the PHC with regard to the final agency decisions reached pursuant to this delegation.

5. Approval of Personnel Appointments

Legislation dating back to 1907 grants the commissioner, with the approval of the PHC, the authority to make personnel appointments for division directors and registrar of vital records (M.G.L. c. 17, §4); deputy commissioners (M.G.L. c. 17, §5); assistant division directors, epidemiologists, inspectors, treasurers, superintendents, medical staff (including student nurses) and “other necessary employees” (M.G.L. c. 17, §6); the acting commissioner during the commissioner’s absence or disability (M.G.L. c. 17, §6); and district health officers (M.G.L. c. 17, §7). While the Commissioner remains the appointing authority for these positions, her authority to make personnel appointments is governed by the hiring procedures and processes established by the Executive Office of Health and Human Services (“EHS”). The PHC provided deemed approval of these personnel appointments.

6. Approval of Department Divisions

The 1907 legislation also authorizes the commissioner to establish certain divisions within the department “and other divisions as the commissioner, with the approval of the public health council, may from time to time determine.” The PHC provided deemed approval to the commissioner for these approvals.

Requested Actions:

The Department requests that the Public Health Council vote to confirm and renew:

- 1) the delegations of authority to the Commissioner or her designee, as set forth in paragraphs 1, 2, 3, 4; and
- 2) the determination that the PHC deems approved: a) the appointment of personnel, as set forth in paragraph 5, made by the Commissioner in accordance with the hiring procedures of the Executive Office of Health and Human Services; and b) the organizational changes to the Department established by the Commissioner, as described in paragraph 6.