

MUSKEGON COUNTY BOARD OF COMMISSIONERS
MUSKEGON COUNTY, MICHIGAN

AGENDA

HUMAN RESOURCES COMMITTEE

Hall of Justice
990 Terrace Street, Muskegon, MI
January 8, 2013

Charles Nash, Chair
Rillastine Wilkins, Vice-Chair

-
1. Call to Order
 2. Roll Call
 3. Approval of Minutes of December 4, 2012
 4. Public Comment (on an agenda item)
 5. Items for Consideration
 - HR13/01 – 01 (Mental Health) Authorize the Release of a Request for Proposals for an On-Site Pharmacy at 376 E. Apple Avenue and All-Inclusive Pharmaceutical Services for CMH of Muskegon County
 - HR13/01 – 02 (Mental Health) Authorize CMH Director to Sign a Contract with the American Association of Intellectual and Developmental Disabilities (AAIDD)
 - HR13/01 – 03 (Public Health) Authorize Public Health – Muskegon County to Replace the Food Service Sanitation Program Enforcement Guideline and Administrative Hearing Process (February 8, 2011) with the Food Service Sanitation Program Enforcement Guideline and Administrative Hearing Process (2013)
 6. Old Business
 7. New Business
 8. Public Comment (on a new topic)
 9. Adjournment

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the commission and state their name for the record. Comments shall be limited to two (2) minutes for each participant, unless time is extended prior to the public comment period by a vote of a majority of the commission.

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE
MUSKEGON COUNTY BOARD OF COMMISSIONERS AND ANY OF ITS
COMMITTEES OR SUBCOMMITTEES

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520

**Muskegon County
Human Resources Committee Meeting
December 4, 2012
3:30 p.m.
Hall of Justice, 4th Floor
Muskegon, MI**

MINUTES

CALL TO ORDER

The meeting was called to order by Commissioner Plummer at 3:49 p.m.

ROLL CALL

Present: Lewis Collins, Benjamin Cross, James Derezinski, Marvin Engle, Alan Jager, Anthony Longmire, Kenneth Mahoney, Scott Plummer, Robert Scolnik, John Snider, Rillastine Wilkins

APPROVAL OF MINUTES

It was moved by Engle, supported by Mahoney, to approve the minutes of the November 6, 2012 meeting as written. Motion carried.

PUBLIC COMMENT (On an agenda item)

None.

ITEMS FOR CONSIDERATION

HR12/12 – 88 It was moved by Cross, supported by Snider, to authorize the addition of two Clinical Services Supervisor II (NX00280) positions at Community Mental Health effective December 15, 2012. Motion carried.

HR12/12 – 89 It was moved by Derezinski, supported by Snider, to authorize the Community Mental Health Services of Muskegon County Executive Director to sign Hospital Reimbursement Adjustment (HRA) agreements with those Community Inpatient Hospitals in which either Ottawa or Muskegon Affiliates paid for inpatient care of their consumers during FY 2011, or MDCH has established our agency as one of the payees for the facility. Motion carried.

HR12/12 – 90 It was moved by Engle, supported by Longmire, to authorize the Community Mental Health Executive Director to sign a contract with Deerfield Behavioral Health, Inc., effective November 1, 2012, for the

purchase of the LOCUS P.A.S./C.A. Service Manager Software and support at the cost of \$19,050.00 plus a monthly licensing and support fee of \$200.00 for up to forty (40) users. Motion carried.

HR12/12 – 91 It was moved by Snider, supported by Wilkins, to authorize the Community Mental Health Executive Director to sign a contract with Heritage Homes Inc., for Community Living Support services at the rate of \$4.71 per 15 minutes for 1 to 1 care, \$2.42 per 15 minutes for 1 to 2 care, and \$1.92 per 15 minutes for 1 to 3+ care, effective October 1, 2012 through September 30, 2013, with an annual cap not to exceed \$75,000.00 for this service. Motion carried.

HR12/12 – 92 It was moved by Derezinski, supported by Snider, to authorize the Community Mental Health Executive Director to sign contracts with those service vendors/providers who have submitted written agreements to continue service provision at the current Fiscal Year 2011/2012 rates for the time period effective October 1, 2012 through September 30, 2013. Motion carried.

HR12/11 – 93 It was moved by Engle, supported by Longmire, to authorize a waiver of the Personnel Rules to appoint the current incumbent to Step 6 of the salary grade of the Medical Nurse Manager classification effective October 1, 2012. Motion carried.

HR12/11 – 94 It was moved by Snider, supported by Engle, to authorize Public Health – Muskegon County to reconfigure the Women’s, Infant and Children (WIC) Clinic to utilize the County’s VDI equipment using Lakeshore Office Furniture in the amount of \$13,216.00 and amend the program budget line items, with no effect on County General Funds. Motion carried.

HR12/11 – 95 It was moved by Derezinski, supported by Mahoney, to authorize the Public Health Director to sign the agreement with the Michigan Department of Environmental Quality for the rendering of technical services in the amount of \$62,036.06, effective from October 1, 2012, to September 30, 2013, with no effect on County General Funds. Motion carried.

HR12/11 – 96 It was moved by Engle, supported by Collins, to approve the Muskegon County Board of Commissioners’ Personnel Rules Personnel System Resolution to revise County Commissioner membership from five (5) to four (4). Motion carried.

OLD BUSINESS

Commissioner Derezinski inquired about the next Jail/Juvenile Transition Center Committee meeting. Ms. Hammersley noted the meeting would be held on Thursday, December 6th, at 1:30 in the Board Room and would focus on presentations by the County's financial advisor and Mr. Heath Kaplan, Finance and Management Services Director.

NEW BUSINESS

None.

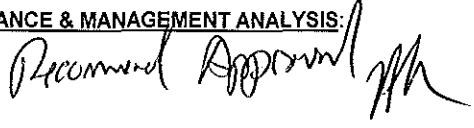
PUBLIC COMMENT (On a new topic)

None.

ADJOURNMENT

There being no further business to come before the Human Resources Committee, the meeting adjourned at 4:03 p.m.

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Human Resources		BUDGETED NON-BUDGETED PARTIALLY BUDGETED X	
REQUESTING DEPARTMENT Mental Health		DATE January 8, 2013	REQUESTOR SIGNATURE Julia Rupp, Executive Director
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)			
<p>Approval is requested to seek proposals through the Request for Proposal (RFP) process from interested and qualified parties for the provision of an on-site pharmacy and all-inclusive pharmaceutical services for Community Mental Health Services of Muskegon County (CMH).</p> <p>CMH currently has separate contracts with Hackley Health Ventures, Inc. and Saint Mary's Family Pharmacy to provide all but the in-house pharmacy as a result of a RFP released in 2009. Currently individuals seen in our medication clinic have their prescriptions e-prescribed to various pharmacies. We are aware of their difficulty with transportation to the pharmacy and also the lack of coordinated care this can create. An in-house pharmacy provides the opportunity for individuals to leave their appointments with their medications filled and in-hand, thereby increasing medication adherence. The pharmacist becomes a part of our care team for one-on-one consultations, group meetings, and medication reviews, as well as assistance with insurance prior authorizations. As part of the team, the pharmacy staff are much more aware of the challenges such as transportation, funding, medication adherence, and communication which allows us to work closely to provide solutions to these challenges.</p> <p>The specific services to be covered by this RFP include:</p> <ol style="list-style-type: none"> 1. The dispensing and management of medications for individuals receiving outpatient services. 2. Medications provided within the Clozaril/Clozapine clinics. 3. The provision of medication management for individuals living in CMH specialized group homes. 4. Individual packaged medications for Brinks Residence and the Assertive Community Treatment programs. 5. Possibly Patient Assistance programs and the filling of medication boxes which are currently provided by CMH staff. 6. Additionally, the in-house pharmacy would be open for use by CMH employees and their family members. <p>Evaluation of the proposals will address cost, ability to meet all of the specifications of the RFP which will include creating the space at CMH, quality of the service information provided, and after-hours services availability.</p>			
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)			
<p>I move to authorize the release of a Request for Proposals (RFP) for an on-site pharmacy at 376 E. Apple Avenue, Muskegon, MI 49442, and all-inclusive pharmaceutical services for Community Mental Health Services of Muskegon County.</p>			
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)			
HUMAN RESOURCES ANALYSIS:		FINANCE & MANAGEMENT ANALYSIS:	
			
CORPORATE COUNSEL ANALYSIS:		ADMINISTRATOR RECOMMENDATION:	
AGENDA DATE: 1/8/13	AGENDA NO.: HR13/01-01	BOARD DATE: 1/15/13	PAGE NO.

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Human Resources	BUDGETED NON-BUDGETED PARTIALLY BUDGETED X
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REQUESTING DEPARTMENT Mental Health	DATE January 8, 2013	REQUESTOR SIGNATURE Julia Rupp, Executive Director
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SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)

Authorization is requested for Community Mental Health Services of Muskegon County (CMH) to enter into a contract with the **American Association on Intellectual and Developmental Disabilities (AAIDD)** (501 3rd Street, NW, Suite 200, Washington, DC 20001) to provide the Supports Intensity Scale Software and support for up to eight (8) users. This agreement will cover a three (3)-year licensing period effective January 1, 2013 to December 31, 2015.

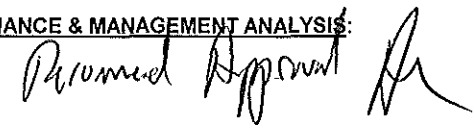
The Supports Intensity Scale (SIS) is published exclusively by AAIDD and is a standardized assessment designed to measure the pattern and intensity of supports an adult with intellectual disabilities requires in order to be successful in community settings. SIS was developed over a five-year period by AAIDD in response to changes in how society views and relates to people with disabilities, and it was released in 2004. Eight (8) staff from CMH were recently trained in the administration of the SIS. The current board motion is to purchase the SIS Online application to collect data from any location with internet access. Those without internet access can collect data on a laptop and synchronize the data using the Venture application. Once data has been collected, it is available for review as well as analysis on an aggregate basis using built-in reporting and analysis tools. A summary report is also available after each administration. CMH will also purchase a customized feature, the Oregon Protocol, which has also been found to be very useful for evaluating individuals with very high medical and behavioral support needs.

Pricing and options for access and use of the AAIDD Supports Intensity Scale for a three (3)-year period is approximately \$25,000.00. The rates were less with the longer contract period. The cost covers eight (8) users and three hundred (300) SIS Assessments per year. Michigan Department of Community Health (MDCH) has recently endorsed the adoption of the SIS and may provide financial support in the future, but this is unknown at this time. If MDCH does provide this support, there is a provision in the agreement to revise the contracted payment amount.

SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)


I move to authorize the Community Mental Health Executive Director to sign a contract with the American Association on Intellectual and Developmental Disabilities (AAIDD), effective January 1, 2013 through December 31, 2015, for the purchase of the Supports Intensity Scale Software and support for a cost of up to \$25,000.00 which covers eight (8) users and three hundred (300) SIS Assessments per year.

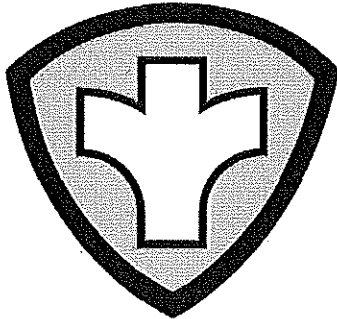
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)

HUMAN RESOURCES ANALYSIS:	FINANCE & MANAGEMENT ANALYSIS: 
CORPORATE COUNSEL ANALYSIS: Concur T. Williams	ADMINISTRATOR RECOMMENDATION:

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REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE HUMAN RESOURCES	BUDGETED NON-BUDGETED PARTIALLY BUDGETED X		
REQUESTING DEPARTMENT Public Health	COMMITTEE DATE January 8, 2013	REQUESTOR SIGNATURE Kenneth A. Kraus	
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)			
<p>The State of Michigan amended the Food Law and adopted the 2009 Michigan Modified Food Code effective October 1, 2012. The changes have invalidated the current Food Service Sanitation Program Enforcement Guideline and Administrative Hearing Process, dated February 8, 2011. The updated (2013) document reflects the new terminology and categorization of food sanitation violations.</p>			
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)			
<p>Authorize Public Health – Muskegon County to replace the Food Service Sanitation Program Enforcement Guideline and Administrative Hearing Process, dated February 8, 2011, with the Food Service Sanitation Program Enforcement Guideline and Administrative Hearing Process (2013).</p>			
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)			
<u>HUMAN RESOURCES ANALYSIS:</u> 	<u>FINANCE & MANAGEMENT ANALYSIS:</u> 		
<u>CORPORATE COUNSEL ANALYSIS:</u> 	<u>ADMINISTRATOR RECOMMENDATION:</u> 		
AGENDA DATE: 1/8/13	AGENDA NO.: HR13/01-03	BOARD DATE: 1/15/13	PAGE NO.



Public Health
Prevent. Promote. Protect.

Muskegon County

Food Service Sanitation Program
Enforcement Guidelines and Administrative Hearing
Process (2013)

Approval Date

Health Officer Signature

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Public Health – Muskegon County Enforcement Protocol Flow Chart

STEPS 1-7 ARE THE PROGRESSIVE ENFORCEMENT ACTIONS TAKEN TO ASSURE COMPLIANCE WITH THE FOOD LAW.	
Step 1	<p>Routine evaluation determines that the establishment is in substantial compliance because:</p> <ul style="list-style-type: none"> ▪ No Priority or Priority Foundation violations were found; or, ▪ Priority or Priority Foundation violations were found but corrected immediately and, ▪ Amount of core violations was not substantial; and, ▪ No repeat violations were found.
Step 2	<p>Follow-up evaluation required because:</p> <ul style="list-style-type: none"> ▪ Priority or Priority Foundation violations were not corrected at the routine evaluation and time was allowed for correction; or, ▪ Amount of Core Violations were substantial; or, ▪ Repeat Priority or Priority Foundation violations in the Major Noncompliance category were found.
Step 3	<p>Re-evaluation required because:</p> <ul style="list-style-type: none"> ▪ Priority or Priority Foundation violations were not corrected after Step 2.
Step 4	<p>Letter of Noncompliance issued because:</p> <ul style="list-style-type: none"> ▪ Recurring Violations are identified during subsequent compliance evaluations and the food service establishment is deemed to be in Major Noncompliance despite correction in Step 2.
Step 5	<p>Office Conference required because:</p> <ul style="list-style-type: none"> ▪ Priority or Priority Foundation violations not corrected after Step 3. ▪ Recurring Violations that are deemed to be in the Major Noncompliance category are not corrected after step 4. <p>The program supervisor presides over the office conference. A Risk Control Plan (RCP) detailing how a licensee will achieve long-term correction is requested. Failure to submit or follow the RCP results in the establishment being placed on an increased frequency of evaluations. A Re-evaluation is required to confirm RCP is in place and being followed.</p>
Step 6	<p>Notice of Intent to limit, suspend, or revoke a food service license and informal hearing required because:</p> <ul style="list-style-type: none"> ▪ Violations are still present or continue to be repeated after step 5. ▪ Other situations warrant this action to protect public health. <p>The Epidemiology Division Supervisor presides over the Informal Hearing. A compliance order is issued based upon the findings in the Informal Hearing.</p>
Step 7	<p>Formal Hearing brought before the Hearing Board because:</p> <ul style="list-style-type: none"> ▪ Corrections not made in accordance with order issued in Step 6. ▪ Other situations warrant this action to protect public health. <p>The Health Officer presides over the Formal Hearing. The Hearing Board only rules on the evidence presented and may decide to limit, suspend, or revoke a food service license. The decision made by the Hearing Board is the final step in the administrative process.</p>

Other situations, listed below, may require action to protect public health. In every case, except when a hold/destruction order is issued for suspect food or beverages, a licensee or operator may appeal the order (see 6 and 7 on the previous page.)

Imminent health hazard

Operation order to close immediately until hazard is eliminated. Hazards include, but are not limited to:

- Lack of power, water, hot water, refrigeration, sewer, or presence of sewage
- Severe insect or rodent infestation
- Damage due to fire, flooding, or severe weather
- Unchecked foodborne illness outbreak and continued exposure to patrons to disease causing organisms.

Operation without a license

Operation ordered closed immediately until license is approved.

Construction or remodeling without receiving approval for plans

Stop work order issued immediately. Order stays in effect until plans for the construction or remodeling are approved by Public Health – Muskegon County.

Safety of foods or beverages suspect

Hold order placed on the food or beverage. Order is lifted when the operator provides laboratory proof that the food or beverage is safe. Otherwise, the food or beverage is destroyed.

Denial

Issuance of license is denied for failure to meet minimum requirements.

DA

Introduction

The purpose of this document is to provide Public Health – Muskegon County with standard procedures for the enforcement of the Food Law (Act 92 of 2000, as amended) and Food Code as adopted by the Food Law. These procedures have been written to comply with sections 2441 and 2442 of Michigan's Public Health Code, the Food Law, and the Administrative Procedures Act. These procedures outline a progressive enforcement approach to Priority (P), Priority Foundation (Pf), and Core (C) violations. This approach begins with providing education and/or information and progresses to a penalty or restriction of a firm's operations. When applied consistently to all firms, it promotes fair and objective treatment. It is also critical to note that persons regulated under state law have a constitutional right to equal protection and due process. Due process rights are required under the Administrative Procedures Act and are incorporated into these procedures. Imperative to any enforcement program is timely and appropriate follow-up. Any order or enforcement decision must include follow-up by the regulatory agency to ensure enforcement actions result in establishment compliance or further enforcement.

These procedures are designed to provide flexibility. They do not dictate what specific action must occur in each particular situation, but provide options for each level of enforcement action. The decision regarding particular actions will be made in regards to the unique situation of each case. Each decision must be documented in the establishment's file.

Principles

Recognizing that safe food is fundamental to individual and public health, further recognizing that food service operations that are constructed, maintained, and operated in a proper manner are necessary to safeguard public health, and to minimize the onset and spread of foodborne illness from food service operations, these enforcement guidelines and administrative hearing process governing food service establishments, vending locations, and temporary food establishments are hereby established under the authority of Section 289.3117 of the Food Law. Specifically, Section 289.3117 states "A local health department may apply procedures for the enforcement of this act that provide notice and opportunity for a hearing equivalent in effectiveness to and which protect the rights of the applicant or licensee comparable to the provisions of chapters 4 and 5 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.271 to 24.292. A local health department shall have a written enforcement procedure and shall make a copy of that procedure available to the public upon request."

Authority

- The Food Law
- The Michigan Public Health Code, Act 368, P.A. of 1978, Part 24, as amended

Definitions

Active Managerial Control: A purposeful incorporation of specific actions or procedures by industry management into the operation of their business to obtain control over foodborne illness risk factors. This is a preventative rather than a reactive approach to food safety through a continuous system of monitoring and verification.

Continuous Violation: A specific violation that is observed during a routine evaluation, is documented, and persists on the next two follow-up and/or re-evaluations without correction.

Core Item: A provision of the Code that is not designated as a Priority Item or a Priority Foundation Item. This violation usually relates to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, or general maintenance.

Days: Shall refer to calendar days.

Department: Shall refer to Public Health – Muskegon County.

Food Code: 2009 FDA Food Code as adopted by the Michigan Food Law.

Health Officer: The legally designated health officer or his or her designee.

Imminent or Substantial Hazard – Food Law § 1109(c): A condition at a food establishment that the Health Officer determines requires immediate action to prevent endangering the health of people.

Minor Noncompliance: The Person in Charge is practicing Active Managerial Control by demonstrating substantial compliance with the Food Code Standard; however, they are not in full compliance with the Food Code Standard (i.e., Proper hand washing techniques were observed throughout the evaluation, but one employee did not wash his hands when returning to his workstation after a break.)

Major Noncompliance: The Person in Charge is not practicing Active Managerial Control by demonstrating substantial noncompliance with the Food Code Standard (i.e., Throughout the evaluation, hand washing was absent. When mentioned to the PIC, the evaluator was told that they were too busy to take the time to wash hands during the lunch rush.)

Person in Charge (PIC): The individual present in the at a food establishment who is responsible for the operation at the time of the evaluation.

Priority Item: A provision in the Code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. These violations have a quantifiable measure to show control of hazards such as cooking, cooling, and hand washing.

Priority Foundation Items: A provision in the Code whose application supports, facilitates or enables one or more Priority Items. These violations include items that require the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

Recurring Violations: A specific violation that is observed during a routine evaluation, is documented, is corrected, and recurs. Two examples of recurring violations are:

1. The same violation is documented on 3 consecutive routine evaluations, but the violation is corrected after each documentation, or
2. A specific violation that is observed during a routine evaluation is documented on 3 of the last 5 evaluations, but which need not be on consecutive evaluations.

Re-Evaluation: An evaluation required by the Department to assure compliance with the Food Law and Food Code. A Re-Evaluation is required for establishments that fail to correct a Priority or a Priority Foundation item in the timeframe required on the evaluation report. A Re-Evaluation is also required when an establishment is put onto an increased frequency of evaluations for failure to correct Recurring Violations; having uncompleted construction at scheduled pre-openings; and to assess licensee performance after a Risk Control Plan has been submitted. Re-evaluations are considered licensing fees and are established by the County Board of Commissioners and can change from time to time.

Risk Control Plan: A written document developed by the establishment in cooperation with the Department for the purpose of correcting a recurring violation. A Risk Control Plan should address what the problem is, why the problem exists, how the problem will be solved, as well as how long-term correction will be achieved. Successful Risk Control Plans are often developed with a team of people instead of individually. They involve training, teaching and coaching staff on proper procedures. Risk Control Plans will be reviewed by Department representatives to determine whether or not the plan has the potential to provide long-term correction of a recurring violation.

Sanitarian: A person designated by the Health Officer to engage in the practice and enforcement of environmental health activities on behalf of Public Health – Muskegon County.

Standard Operating Procedures: Procedures specific to an operation that describe the activities necessary to complete tasks in accordance with the Food Code and the Food Law. The procedures are used to train staff members responsible for tasks. Three purposes for establishing Standard Operating Procedures (SOPs) are: to protect products from contamination from microbial, chemical, and physical hazards; to control microbial growth that can result from temperature abuse; and to ensure procedures are in place for maintaining equipment.

Unauthorized Construction: If any person constructs, or begins construction of a new food service establishment or if any person constructs or begins a remodel of a portion of an existing food service establishment without an approved plan, the Health Officer shall take action as provided in Section 3117 of Act 92 of the Public Acts of 2000. If the Health Officer determines that any person is constructing or remodeling a food service establishment in violation of the provisions of the Code, the Health Officer shall order the immediate cessation of construction, alterations, conversions, or remodeling until the owner/licensee submits the appropriate and acceptable plans and specifications to the Health Officer.

Food Protection Program Compliance Evaluations

1. **Routine Compliance Evaluation:** Each establishment is evaluated by a Sanitarian according to all applicable laws, regulations and local ordinances with follow-up evaluations for compliance with stated correction schedules.
 - a. If the establishment is in compliance with the Food Code and Food Law, routine monitoring continues.
 - b. If the establishment is in noncompliance with the Food Code and Food Law, the Department shall do the following:
 - i. If there is an imminent or substantial hazard to the public health an order to cease all food service operations will be issued by the Health Officer.
 - ii. If Priority or Priority Foundation violations are present and are corrected at the time of the evaluation, routine monitoring will continue; however, if Priority or Priority Foundation violations are not corrected at the time of the evaluation, a follow-up evaluation will occur within 10 days, but no more than 30 days, to document any corrections. If Priority or Priority Foundation violations are found to be Chronic or Recurring, accelerated enforcement actions may take place
 - iii. If Core Violations are present, reassessment will occur at a minimum of each Routine Compliance Evaluation. Core Violations shall be re-assessed more frequently if they migrate to Priority or Priority Foundation violation(s), become a Chronic or Recurring Violation, or other enforcement actions may be pursued at the direction of the Health Officer.
2. **Documenting Violations:** At a minimum, each establishment is evaluated based on the Food Law and Food Code at routine evaluation intervals. Assessment is based on the presence of violations at the time of the evaluation as well as the history of establishment violations and/or enforcement. Each establishment will be informed of compliance expectations through discussions and/or providing copies of laws and regulations. It is expected that all violations will be promptly corrected otherwise enforcement action will be pursued.
3. **Follow-up Evaluation:** Follow-up Evaluations are intended to concentrate on violations previously cited. However, if new violations are observed by the sanitarian conducting the compliance evaluation, it will be documented and the sanitarian will complete the appropriate evaluation to ensure food safety. Follow-up Evaluations are performed by sanitarians:
 - a. To verify whether violation corrections were completed and/or to determine if there is a need for further enforcement action;
 - b. As a result of an enforcement action; or are
 - c. Requested by the licensee.

Enforcement Action Procedures

The following steps are listed in approximate order of increasing severity and will be used to achieve a consistent and progressive enforcement policy. These steps will be progressively enforced unless a violation(s) warrants accelerated action. The Health Officer may make a decision to pursue accelerated enforcement action based on the totality of the establishment's evaluation history or the seriousness of violations found on evaluations and re-evaluations.

Informal Enforcement Actions

File Review: Sanitarians are responsible for reviewing each food establishment file prior to performing any compliance evaluations in order to determine the establishment's compliance history.

Re-Evaluation: If the licensee does not correct a Priority or a Priority Foundation violation within the timeframe specified on the evaluation report, the sanitarian will conduct a Re-Evaluation of the establishment in order to verify that the cited violation(s) was corrected. If the violation is not corrected by the Re-evaluation, i.e., it is a Continuous Violation, the sanitarian must give the file to the program supervisor for an enforcement review.

Post Evaluation Review: Sanitarians are responsible for reviewing an establishment's file after they conduct a compliance evaluation in order to determine if the establishment has any Recurring Violations. If Recurring Violations are found, the sanitarian will turn the file into the program supervisor for review.

Letter of Noncompliance: The supervisor will issue a Letter of Noncompliance to the licensee for Recurring Violations that fall into the Major Noncompliance category. That letter will outline the extent of the licensee's Major Noncompliance and inform them that formal enforcement actions will be pursued if the violation in question continues to be identified by Department staff. If the supervisor determines that the violation falls into the Minor Noncompliance category, that determination must be documented and placed in the file.

Formal Enforcement Actions

When an establishment's record warrants formal enforcement action by the Department, the program supervisor will determine what methods of achieving compliance are necessary. Enforcement decision rationale and documentation will be made in the establishment's record, official notice will be sent to the establishment owner/management, and Corporate Counsel will be notified as deemed necessary by the Health Officer. All notices contemplated by these procedures shall be sent by the Department certified mail or by hand delivery.

Compliance Conference

1. The program supervisor is responsible for coordinating and conducting compliance conferences.

2. Official notice will be sent via certified mail or hand delivery to the licensee indicating the date, time, and location of the conference.
3. After the conference is held, the licensee will be provided with a follow-up letter detailing what was agreed upon and what requirements the licensee must demonstrate for compliance.
4. A sanitarian conducts a Re-Evaluation for compliance assurance.
5. Failure of the licensee to demonstrate compliance at this level may result in the establishment being placed on an increased frequency of evaluations. The establishment will be charged a fee for each Re-evaluation.

Informal Hearing

An informal hearing may be held when in the judgment of the Health Officer such a hearing is in the best interest of the public. Possible reasons for an informal hearing include, but are not limited to:

1. Failure to comply with an order of the Health Officer or designee to correct recurring, continuous, or critical violations;
2. Failure to meet the requirements of the Food Law and/or Food Code;
3. Interfering with an agent of the health officer in efforts to correct recurring or continuous violations;
4. Priority, Priority Foundation, or Core Items are recurring or continuous violations;
5. A written request from a licensee.

Informal Hearing Procedure

1. Official notice will be sent via certified mail or hand delivery to the licensee indicating the date, time, and location of the hearing. The notice will indicate the reasons for the hearing; will advise the licensee of his/her right to representation; and shall allow the licensee to request a change of date or time up to 48 hours prior to the original hearing date. The changed date may not exceed 5 working days beyond the originally scheduled hearing.
2. The hearing officer (Epidemiology Division Supervisor, or other person designated by the Health Officer) will hear testimony from the Department representative(s) and the licensee or the licensee representative. If licensee or designated representative fails to appear, the Informal Hearing will be held in their absence. The hearing officer will produce a decision based on factual evidence presented at the hearing. The decision will contain findings of fact and be based on conclusion of applicable law. Notification of decision will be sent to the establishment by certified or hand delivered mail.
3. If alleged violations are confirmed, the hearing officer shall mandate corrections and a compliance schedule. The establishment shall remain in compliance with mandated corrections for the length of the compliance schedule. If the establishment does not remain in compliance with mandates, the

Health Officer may order a Formal Hearing for the purpose of suspending or revoking the establishment's food license.

4. An aggrieved licensee has the ability to request a formal hearing at any time. This request shall be made in writing and delivered to the Department by mail or in person. The request must specify the basis for the request. Upon receipt of a request, the Health Officer may order an inspection or other options to determine the validity of the licensee's complaint. The formal hearing will be scheduled within 10 days of receipt of request. Official notice will be sent to the licensee indicating the date, time, and location of the hearing scheduled.

Formal Hearing

A Formal Hearing is held for the purpose of determining whether an establishment food service license shall be suspended, revoked, or limited. The licensee may request a Formal Hearing if the licensee is aggrieved by an order of the Health Officer.

Formal Hearing Procedure

1. Notice

- a. The parties shall be given reasonable notice of the hearing, which notice shall include:
 - i. A statement of the date, hour, place, and nature of the hearing.
 - ii. A statement of the legal authority and jurisdiction under which the hearing is to be held. (For most cases this will be MCL 289.3105(1), MCL 289.4125, MCL 289.3109)
 - iii. A reference to the particular sections of the statutes and rules involved.
 - iv. A short and plain statement of the matters asserted.
 - v. A statement that the licensee may request a change of time or date until 48 hours prior to the hearing, however, the rescheduled hearing will be no later than 5 days from the originally scheduled hearing.
 - vi. A statement that the licensee may be represented or assisted by legal counsel at the hearing.
- b. Notice will be sent by certified mail or hand delivered to the licensee.
- c. A formal hearing will be scheduled no later than 10 days after the mailing or hand delivery of the notice.
- d. The Licensee may file a written answer prior to the date of the hearing.

2. Discovery

a. Any reports or other information possessed by the Department will be provided to the licensee within three days after the mailing of the notice of the scheduled hearing subject to the limitations of The Freedom of Information Act.

b. Records of internal procedures of the Department are exempt from discovery.

3. Evidence

a. The license holder and the Department may have legal representation and witnesses testify on their behalf.

b. The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

c. The Michigan Rules of Evidence shall apply to a formal hearing to the extent practicable, however, the Department may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record.

d. A party may cross examine an opposing witness, including the author of a document prepared by, on behalf of, or for use of the Department and offered in evidence. A licensee may submit rebuttal evidence.

e. A deposition may be used in lieu of other evidence when taken in compliance with the Michigan Court Rules.

f. Evidence in a formal hearing, including records and documents in possession of the Department of which it desires to avail itself, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.

g. The Department may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within the Department's specialized knowledge. The Department shall notify the licensee at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the licensee shall be given an opportunity before final decision to dispute the fact or its materiality. The Department may use its experience, technical competence and specialized knowledge in the evaluation of evidence presented to it.

h. The Hearing Officer may issue subpoenas to compel attendance and testimony of witnesses and the production of books, papers and other documentary evidence.

4. Hearing Board

- a. The hearing board shall consist of at least the following individuals:
 - i. Health Officer or designated representative. This individual shall serve as the Hearing Officer.
 - ii. Chair of the Human Resources Committee of Muskegon County Board of Commissioners or his/her designated Board of Commissioners representative; and the,
 - iii. County Commissioner representing the district in which the food service establishment is located or his/her designated Board of Commissioners representative.
- b. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding Hearing Officer, the Department shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding. When a Hearing Officer is disqualified or it is impracticable for him to continue the hearing, another Hearing Officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.
- c. Unless required for disposition of an ex parte matter authorized by law, a member or employee of the Department assigned to make a decision or to make findings of fact and conclusions of law in a formal hearing shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. A Department member may communicate with other members of the Department and may have the aid and advice of the Department staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case.

5. Record

- a. The Department shall prepare an official record of a hearing which shall include:
 - i. Notices, pleadings, motions, and intermediate rulings.
 - ii. Questions and offers of proof, objections, and rulings thereon.
 - iii. Evidence presented.
 - iv. Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.
 - v. Proposed findings and exceptions.
 - vi. Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

- b. Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

6. Decision

- a. A final decision or order of the Department shall be made within 30 days of the formal hearing, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.
- b. This decision shall be the final step in the administrative process.

7. Appeal

- a. A decision of the Hearing Board may be appealed to the circuit court no later than 60 days after the date of the final decision.

8. Default

- a. If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

9. Formal Hearing Format

- a. Call to order by Hearing Officer.
- b. Date, time, and reason for hearing stated.
- c. Introductions - All names, positions and titles, representatives and reasons for attendance of individuals present at the hearing shall be stated for the record by the Hearing Officer. At this time the Hearing Officer shall question Board Members as to any conflict of interest in the case before the Board.
- d. Hearing Format
 - i. Proceedings are to be recorded and kept available as a matter of public record.
 - ii. Department staff may present their case or may be represented, allowing opportunities for cross-examination by the licensee or the licensee's representative.

- iii. The licensee or the licensee's representative shall present their case, allowing an opportunity for cross-examination by the Department staff or representative.
- iv. Both the Department and the licensee shall have an opportunity to clarify their respective positions.
- v. Hearing Board members may ask questions at any time.
- vi. The Board may deliberate on the testimony/evidence for no more than thirty (30) days.
- vii. The Board must render a decision within thirty (30) days.
- viii. Final decisions of the Board shall be announced with all parties present in a meeting open to the public. A decision may be made for the Department or the licensee on each allegation.

Additional Enforcement Options

The following are additional enforcement options, which may be used in conjunction with or independently of the above progressive enforcement, as individual cases may warrant such actions.

1. **License Revocation or Suspension:** A process that may begin with an Informal Hearing, and offers the opportunity for a Formal Hearing. Licensee, agency representatives, and Department hearing officer attend the hearing.
2. **Prosecution:** Department representatives may file a complaint with the Muskegon County Prosecutor for violation of Michigan laws or regulations.
3. **Summary Suspension of License:** The Health Officer may summarily suspend a license or registration based on evidence that an imminent threat to public health, safety, or welfare exists. The licensee may petition the Health Officer for a Formal Hearing to dissolve the order. The Health Officer shall schedule a hearing to decide whether to grant or deny a petition to dissolve the order.
4. **Injunction:** The Department may apply to circuit court to grant a temporary or permanent injunction restraining any person from violating specific provisions of Michigan laws and regulations.
5. **License Limitation:** The Department may place restrictions on a food service license, limiting the preparation of food for the purpose of protecting the public's health. A licensee must be provided an opportunity for an administrative hearing on the issue of the imposition of the license limitation. A licensee may at any time, request a re-evaluation of the food establishment for removing the limitation and reinstating the full license [Food Law, Section 2121.]
6. **Order to Cease All Food Operations:** Issued by the Department when an operator does not possess a food service establishment license. Food operations may not resume until the operator is in full compliance with all licensing requirements.
7. **Order to Cease Food Operations:** The Health Officer may order the immediate discontinuance of a food service operation upon the determination that an imminent or substandard hazard to public

health exists. The licensee may request a formal hearing on the order to a cease food operation. The food service operation shall not be resumed until the conditions responsible for the order to cease operation no longer exist [Food Law, Section 2113] as determined by a Follow-up or Re-Evaluation by the Department. If a food service operator voluntarily ceases operation, the Department must be notified when conditions have been eliminated; however, the establishment may be allowed to resume operation on their own before the Re-evaluation is conducted with the approval of the Health Officer.

8. **Seizure:** An order issued to hold food found to be sold, held for sale, or exposed for sale in violation of state laws and regulations, or suspected of being in violation of state laws and regulations. Follow-up is required to record disposition of product [Food Law, Section 2105].

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