MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of August 11, 2021

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**PUBLIC HEALTH COUNCIL**

**MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH**

**Henry I. Bowditch Public Health Council Room, 2nd Floor**

**250 Washington Street, Boston MA**

**Updated Docket: \*\*\*REMOTE MEETING\*\*\* Wednesday, August 11, 2021 – 9:00AM**

***Note: The August Public Health Council meeting will be held remotely as a video conference consistent with St. 2021, c. 20, s. 20, which provides for certain modifications to the Massachusetts Open Meeting Law due to COVID-19.***

Members of the public may listen to the meeting proceedings by using the information below:

Join by Web: <https://statema.webex.com/statema/onstage/g.php?MTID=ee28a571655d897af4c1ab3a13d56d20d>

Dial in Telephone Number: 1-866-692-3580

Access code: 161 486 1449

1. **ROUTINE ITEMS** 
   1. Introductions
   2. Updates from Acting Commissioner Margret Cooke.
      * Review of Opioid-related Overdose Death Data, 1st and 2nd Quarters 2021.
   3. Record of the Public Health Council Meeting held July 14, 2021. **(Vote)**
2. **EMERGENCY REGULATIONS**
   1. Request to amend, on an emergency basis, 105 CMR 150, *Standards for long-term care facilities.* **(Vote)**
3. **FINAL REGULATIONS**
   1. Request to rescind 105 CMR 316.000, *Use of Face Masks and Coverings in Response to the COVID-19 Pandemic.* **(Vote)**
4. **PRESENTATIONS**
   1. Informational presentation on Mosquito-borne Disease Surveillance in Massachusetts.
   2. New Results and Updates from the COVID-19 Community Impact Survey (CCIS).

*The Commissioner and the Public Health Council are defined by law as constituting the Department of Public Health. The Council has one regular meeting per month. These meetings are open to public attendance except when the Council meets in Executive Session. The Council’s meetings are not hearings, nor do members of the public have a right to speak or address the Council. The docket will indicate whether or not floor discussions are anticipated. For purposes of fairness since the regular meeting is not a hearing and is not advertised as such, presentations from the floor may require delaying a decision until a subsequent meeting.*

Attendance and Summary of Votes:

Presented below is a summary of the meeting, including timekeeping, attendance and votes cast.

Date of Meeting: August 11, 2021

Start Time: 9:08am Ending Time: 11:10am

| Board Member | Attended | First Order: Approval of July 14, 2021 Meeting Minutes (Vote) | Second Order: EMERGENCY REGULATIONS: Request to amend, on an emergency basis, 105 CMR 150, Standards for long-term care facilities. (Vote) | Third Order: FINAL REGULATIONS: Request to rescind 105 CMR 316.000, Use of Face Masks and Coverings in Response to the COVID-19 Pandemic. (Vote) |
| --- | --- | --- | --- | --- |
| Acting Commissioner Margret Cooke | Yes | Yes | Yes | Tabled |
| Edward Bernstein | Yes | Yes | Yes | Tabled |
| Lissette Blondet | Yes | Yes | Yes | Tabled |
| Kathleen Carey | Yes | Yes | Yes | Tabled |
| Sec. Elizabeth Chen | Yes | Yes | Yes | Tabled |
| Harold Cox | No | Absent | Absent | Absent |
| Alba Cruz-Davis | Yes | Yes | Absent | Absent |
| John Cunningham | Yes | Yes | Yes | Tabled |
| Michele David | Yes | Yes | Yes | Tabled |
| Michael Kneeland | Yes | Yes | Yes | Tabled |
| Keith Hovan | No | Absent | Absent | Absent |
| Joanna Lambert | Yes | Abstained | Yes | Tabled |
| Mary Moscato | Yes | Abstained | Yes | Tabled |
| Acting Secretary Cheryl Poppe | No | Absent | Yes | Tabled |
| Summary | 11 Members Present; 3 Absent | 9 Members Approved; 2 Abstained; 3 Absent | 11 Members Present; 3 Absent |  |

**PROCEEDINGS**

A regular meeting of the Massachusetts Department of Public Health’s Public Health Council (M.G.L. c. 17, §§ 1, 3) was held on Wednesday, August 11, 2021 by the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts 02108.

Members present were: Margret Cooke; Edward Bernstein, MD; Lissette Blondet; Kathleen Carey, PHD; Secretary Elizabeth Chen; Alba Cruz-Davis, PhD, MPH; John Cunningham, PhD; Michele David, MD; Michael Kneeland, MD; Joanna Lambert and Mary Moscato.

Also in attendance was Elizabeth Scurria Morgan, Acting General Counsel at the Massachusetts Department of Public Health.

Commissioner Cooke called the meeting to order at 9:08AM and made opening remarks before reviewing the agenda.

**1. ROUTINE ITEMS**

b. Updates from Acting Commissioner Margret Cooke

Commissioner Cooke proceeded to update the council on the following:

**Sherman Lohnes Retirement**

Commissioner Cooke stated that Sherman Lohnes, the Director of the Division of Health Care Safety and Quality (within the Bureau of Health Care Safety and Quality), will be retiring at the end of this month.  Sherman started with the Department back in 1992, and throughout his career has led his team through a seemingly endless array of complex issues and challenges.  We are so grateful for his decades of hard work and wish him all the best in his retirement.

**New Member—Mary Moscato**

Commissioner Cooke welcomed the newest member to the Council, Mary Moscato. Mary is President of Hebrew SeniorLife Health Care Services and Hebrew Rehabilitation Center in Boston, where she oversees a network of senior care services and a post-acute delivery system comprised of a nursing home, long term chronic care, in- and outpatient rehabilitation, home care, and hospice. She is a Fellow in the American College of Healthcare Executives, serves on the boards of the MA Health and Hospital Association and MA State Nursing Home Administrators, and is a guest lecturer at Boston University and Rutgers University.

**COVID and Vaccination Update**

* Across the country and here in Massachusetts COVID-19 cases are ticking up. In large part, that is due to the Delta variant which is known to be more transmissible than the original COVID-19 virus.
* According to the CDC, the Delta variant causes more than TWO TIMES as many infections as the original virus.
* The Delta variant can be transmitted among the vaccinated. DPH’s own State Epidemiologist Dr. Catherine Brown was the lead author of a study the CDC published late last month that found that in the recent Barnstable County COVID outbreak, the Delta infection resulted in similarly high viral loads in vaccinated and unvaccinated people. Commissioner Cooke commended Dr. Brown’s groundbreaking work and her contribution to deepening public health researchers’ understanding of the Delta variant.
* Last week, DPH issued an order requiring that all staff in nursing homes be fully vaccinated against COVID-19 by October 10, 2021, with exceptions for those with medical restrictions or "sincerely held" religious beliefs that prevent a person from getting vaccinated. Later in the meeting Department staff will be requesting approval of an emergency amendment to add these requirements to the long-term care facility regulations.
* DPH recently updated the mask guidance in Massachusetts. Now, fully vaccinated individuals are advised to wear a mask when indoors (and not in your own home) if you have a weakened immune system, are at increased risk for severe disease, or if someone in your household has a weakened immune system, is at increased risk for severe disease, or is an unvaccinated adult.
* DPH also developed guidance with the Department of Elementary and Secondary Education (DESE), and on July 30, 2021 DESE released recommendations regarding masking in schools.
  + This fall, it is strongly recommended that all students in kindergarten through grade 6 wear masks when indoors, except students who cannot do so, due to medical conditions or behavioral needs. Masks are not necessary outdoors and may be removed while eating indoors.
  + DESE and DPH also strongly recommend that unvaccinated staff in all grades, unvaccinated students in grades 7 and above, and unvaccinated visitors wear masks indoors, in alignment with the statewide advisory on masking.
* The state continues to make progress on vaccinating our residents. We continue to lead the nation in vaccination rates, with over 75% of individuals 18 and over in Massachusetts fully vaccinated, and 64% of our total population is fully vaccinated. (Source: CDC 8/9)
  + Massachusetts has the second highest COVID vaccination rate in the country, and the highest among large states (more than 5M residents).
* A core principle of the state’s vaccine program has been to address vaccine equity and access for the Commonwealth’s most disproportionately impacted communities.
* The Administration has invested over $37 million in municipal and local vaccine equity initiatives to increase vaccination through mobile vans like the VaxBus, the in-home vaccination program, pop-up clinics, employer programs and back to school vaccination clinics.
* There are still significant differences for many communities of color, who have been disproportionately impacted by COVID due to underlying factors such as housing, community supports, and occupation.
* Five of our priority communities have exceeded statewide benchmarks for vaccination, however 8 out of 20 are still well below the statewide average.
* DPH is working with leaders and local organizations in these communities to improve vaccination rates, using best practices and the best ideas to encourage vaccination.

**Opioid Data Report**

Commissioner Cooked then turned to a review that was conducted in August of data on fatal and non-fatal opioid overdoses as part of ongoing surveillance of, and response to, the opioid epidemic. These data provide snapshots in time using confirmed and estimated data to help DPH and local communities respond more effectively based on the most recent information available.

Commissioner Cooke presented the opioid data report.

9:11am Lissette Blondet joined the meeting.

9:21am Alba Cruz-Davis joined the meeting.

Commissioner Cooke then asked if the Council members had any remarks or questions before proceeding.

Dr. Bernstein asked what has been learned about most effective practices, what is the change in action for respond to this data.

The Bureau of Substance Addiction Services (BSAS) was having technical difficulties and was unable to respond verbally but will follow up with Dr. Bernstein after the meeting.

Commissioner Cooke stated that there is funding allocated to address these specific issues.

Dr. Bernstein was pleased to hear there is more funding and stated that access to mental health and social determinants such as housing and education are important issues to address through a holistic approach.

Commissioner Cooke stated that there are funds dedicated to housing programs with low barriers for individuals in need.

**1. ROUTINE ITEMS**

c. July 14, 2021 Minutes (Vote)

The Commissioner asked if there was a motion to approve the July PHC minutes.

Secretary Chen made the motion, which was seconded by Dr. Carey.

Ms. Lambert and Ms. Moscato abstained. All other members present approved.

**2. EMERGENCY REGULATIONS**

**a. Request to amend, on an emergency basis, 105 CMR 150, Standards for long-term care facilities. (Vote)**

Commissioner Cooke invited Rebecca Rodman, Senior Deputy General Counsel, and Sherman Lohnes from the Bureau of Health Care Safety and Quality, to present on a request to amend, on an emergency basis, the Department’s regulations addressing standards for long-term care facilities.

Upon conclusion of the regulations, Commissioner Cooke asked if the Council members had any questions.

Dr. Cunningham asked if this order covers future subsequent booster vaccine requirements.

Ms. Rodman stated it will cover this and the staff will be required to have the approved regimen of vaccines.

Dr. David stated this is an important step to protect the elderly and at-risk populations.

Ms. Blondet stated that she is pleased to see that the flu vaccine is also being added to this regulation.

Commissioner Cooke stated that they will be aligning the flu section of the regulation and taking an in depth look at the influenza vaccine but not on an emergency basis.

Dr. Kneeland agreed that the influenza issues are important and should be addressed.

Ms. Moscato thanked Sherman for presenting.

Dr. Bernstein asked what the percentage of total death in the nursing home and long-term care facilities has been.

Dr. Brown stated that she will investigate and get back to the council members with those numbers.

Dr. Bernstein stated that it is essential that all nursing home staff and residents are vaccinated. He asked about the status of the masking order.

Commissioner Cooke stated that is the on the docket for discussion later in the meeting.

Dr. Bernstein stated this is an important issue and asked how nursing home staff are being protected.

Commissioner Cooke stated that there have been some outbreaks of COVID-19 in nursing homes due to the delta variant. DPH is working closely with hospitals and ensure that all long-term care facility residents are vaccinated prior to discharge. Currently, there are quarantine measures in place and new guidance has been issues for long-term care facilities. Vaccines are being administered to all staff that are not vaccinated.

Dr. Bernstein asked if there could be an order to require all health care workers be vaccinated.

Commissioner Cooke stated that DPH will continue to work with agencies to ensure that health care workers are vaccinated. Most hospitals and acute care facilities have instituted a requirement for health care workers to be vaccinated.

Dr. David asked about improving care for patients in quarantine and isolation.

Commissioner Cooke stated that DPH is supporting keeping visitation in place to help with these issues.

Secretary Chen stated that Elder Affairs is working with DPH and staying very close to this issue. She stated that isolation is mentally straining on families and patients. She stated that they are supporting safe group activities, safe visitation, and encouraging staff vaccination throughout all long-term care facilities. Secretary Chen stated that Elder Affairs is cognizant of the effects of isolation and is implementing mitigation methods.

Dr. Brown stated that the percentage of deaths in long-term care facilities (including nursing homes, rest homes and assisted living) is just over 30 percent.

Dr. Bernstein stated he is concerned that the vaccination rates at health care facilities is insufficient.

Dr. Brown stated that though vaccination is our best tool, other methods such as masking is a helpful mitigation method. She stated that requiring vaccinations is a complicated topic but are continuing to have discussions about it.

Dr. Bernstein stated that there could be an order for health care facilities.

Commissioner Cooke stated that is one of the ways that this could be accomplished.

Ms. Lisette asked if there could be resistance from this regulation as there had been with the influenza vaccine in the past.

Commissioner Cooke stated that DPH is currently collecting data in health care facilities about staff that are medically unable to receive the vaccine or who have sincerely held religious beliefs that prevent them from being vaccinated, and that this is a relatively small number. DPH is having one on one peer counselling with those who have been vaccine hesitant, to get all workers on board with vaccination.

Dr. Cruz-Davis stated targeted outreach methods and education are effective.

Commissioner Cooke stated that every person that gets vaccinated is one step closer, and that DPH and the Commonwealth will do everything they can to support this process.

With no further questions from council members, Commissioner Cooke asked if there is a motion to approve, on an emergency basis, amendments to 105 CMR 150.

Dr. Kneeland made the motion, which was seconded by Dr. Bernstein.

All other members present approved.

Commissioner Cooke stated that the emergency amendments are approved.

**3. FINAL REGULATIONS**

**a. Request to rescind 105 CMR 316.000, Use of Face Masks and Coverings in Response to the COVID-19 Pandemic. (Vote)**

Commissioner Cooke invited Lynn Squillace, Deputy General Counsel, to present on a request to finalize the repeal of 105 CMR 316.000.

Upon conclusion of the regulations, Commissioner Cooke asked if Council members had any questions.

Dr. Bernstein asked if these orders be restored if needed, and if approved, would the PHC still have the power to reinstate this order.

Ms. Scurria Morgan stated that the public health emergency authority is separate from this regulation. The repeal of the broad statewide mandate does not affect the ability of the Commissioner to issue orders under the public health emergency authority.

Dr. Bernstein stated that there is a duty to protect the public while the data is showing a possible resurgence in COVID-19 and a masking mandate is indicated.

Commissioner Cooke stated that some towns have instituted mask mandates indoors.

Dr. Brown stated that the current mask advisory included a recommendation for masking of unvaccinated individuals when they are not in their home and social distancing is not possible. It remains clear that nationwide, areas where the delta variant are most significant are the same areas where vaccination rates are also low. Massachusetts has very high vaccination rates.

Dr. Bernstein stated that he is concerned about individuals traveling and is concerned about the nationwide vaccination rate. He expressed concern that the current masking order does not go far enough to protect the public.

Ms. Blondet stated she agrees with Dr. Bernstein that this sounds contradictory to what the CDC advises. She also stated her concern that visitors from outside Massachusetts can expose residents.

Dr. Brown stated she appreciates the advice of the council members and the points are well taken, but the CDC recommendations are national guidance that DPH takes into consideration to apply to its unique circumstances. She stated that the current masking advisory is in accordance with MA’s data. DPH will continue to track the data and adjust orders when necessary.

Dr. Carey stated that she agrees with Dr. Bernstein’s sentiments. She stated she is concerned that though Massachusetts has a good vaccination rate, vaccinated individuals can still contract the virus, and this is very concerning.

Dr. Cruz-Davis stated that she agrees with the council members that this is a major concern and needs further consideration.

Dr. Cunningham made the motion to table this issue until the September meeting.

Ms. Lisette agreed with Dr. Cunningham.

Ms. Scurria Morgan stated that this regulation was already repealed during the June meeting. The motion today is for the final administrative steps to finalize the regulation. Repealing this regulation in no way effects the authority for the Commissioner to impose mask mandates where appropriate.

Dr. Cunningham requested postponing this process.

Dr. Bernstein expressed concern about the message this would send to the public regarding the seriousness of this issue

Commissioner Cooke requested a brief break to confer with the DPH legal teams for process.

At 10:10am, the Public Health Council meeting paused.

Commissioner Cooke called the meeting back to order at 10:21am.

Commissioner Cooke asked Dr. Cunningham to withdraw the motion to table this matter and return to this issue at the end of the meeting.

Dr. Cunningham withdrew the motion.

**4. PRESENTATIONS**

**a. Informational presentation on Mosquito-borne Disease Surveillance in Massachusetts.**

Commissioner Cooke invited Dr. Brown, State Epidemiologist and State Public Health Veterinarian. Dr. Brown to update the Council on mosquito-borne disease surveillance in Massachusetts for this season.

Upon conclusion of the presentation, Commissioner Cooke asked if the Council members had any questions.

Secretary Chen asked if the agent used for aerial spraying has an environmental impact.

Dr. Brown stated there is a product review every year by DPH in collaboration with the Department of Agricultural Resources, the Department of Environmental Protection and the Department of Fish and Wildlife. The same product has been used for the past few years, it is a pesticide and applied during hours when the mosquito species of concern is at peak. Droplet sizes are an ultra-low volume mist and are calculated and designed to kill mosquitoes specifically and are likely not large enough to have impact on larger insect species that are not targeted and may be out at the same time.

Secretary Chen asked how long the product is active and what are the ground water effects.

Dr. Brown stated that there is no residual effect, and that the agent must contact the mosquitos in flight. It dissipates rapidly and is inactivated rapidly by sunlight and water. There is a precaution in place to avoid any exposure to open surface drinking water, where no aerial spraying occurs.

There were no further questions or comments from the council members.

**b. New Results and Updates from the COVID-19 Community Impact Survey (CCIS).**

Commissioner Cooke invited Dr. Lauren Cardoso, from the Child and Youth Violence Prevention Program from the Bureau of Community Health and Prevention to share findings from their COVID-19 Community Impact Survey. She stated that insights shared in this meeting’s presentation will focus intimate partner violence (IPV).

Upon conclusion of the presentation, Commissioner Cooke asked if the Council members had any questions.

Secretary Chen asked for more detail about the data points for Intimate Partner Violence.

Dr. Cardoso stated that 2.3% is an increase from the 2005 survey, but that this comparison is challenging, as different types of behaviors were surveyed between the two years. She also stated that this is underreported, meaning the actual rate is higher.

Commissioner Cooke asked for a motion to table the discussion and vote on finalizing the repeal of 105 CMR 316.000 regulation to the next scheduled meeting on September 8th, 2021.

Ms. Lambert made the motion, which was seconded by Dr. Cunningham.

All other members present approved.

Commissioner Cooke stated the motion to table this discussion for 105 CMR 316.000 regulation is approved.

Dr. Bernstein asked for clarification on notice of compliance.

Ms. Squillace stated this is the formal step after a notice and comment period if there is no change to an initial action. The notice of compliance is form is from the Secretary of State’s office and would not affect the Commissioner’s power under a public health emergency.

Dr. Bernstein asked if DPH is the agency that implements rules and regulations related to emergency regulations.

Ms. Squillace stated that the notice of compliance is a form that would be filed with the Secretary of State’s office to comply with the required administrative procedures for any regulation.

Dr. Bernstein asked if DPH will still have the authority to vote on a public health order under the public health emergency.

Commissioner Cooke clarified that the council members can still authorize an emergency order under the public health emergency.

Ms. Squillace stated the notice of compliance is entirely separate from a public health emergency and does not apply to the issuance of a public health order.

Dr. Bernstein asked if they could apply mask orders if needed in the future.

Ms. Squillace stated that any existing authority at that time would still remain.

Dr. Cruz-Davis thanked Dr. Cardoso and Dr. Ursprung for their timely work on IPV.

With no further questions, Commissioner Cooke reminded Council members the next meeting would be held on Wednesday, September 8, 2021.

Commissioner Cooke asked if there was a motion to adjourn.

Dr. Kneeland made the motion, which was seconded by Dr. Cruz-Davis. All members present approved. The meeting adjourned at 11:10am.