MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of September 8, 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**

**Docket: \*\*\*REMOTE MEETING\*\*\* Wednesday, September 8, 2021 – 9:00AM**

***Note: The September 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=ea3074f066c780be2ad870c2d3d6f3cc8

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

Access code: 161 742 2335

1. **ROUTINE ITEMS** 
   1. Introductions
   2. Updates from Acting Commissioner Margret Cooke.
   3. Record of the Public Health Council Meeting held August 11, 2021. **(Vote)**
2. **REGULATIONS**
   1. Further action regarding 105 CMR 316.000, *Use of Face Masks and Coverings in Response to the COVID-19 Pandemic.* **(Vote)**
   2. Request to amend, on an emergency basis, 105 CMR 150, *Standards for long-term care facilities.* **(Vote)**
   3. Request to amend, on an emergency basis, 105 CMR 141, *Licensure of hospice programs.* **(Vote)**
   4. Request to promulgate, on an emergency basis, 105 CMR 159, *COVID-19 vaccinations for certain staff providing home care services in Massachusetts.* **(Vote)**

*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: September 8, 2021

Start Time: 9:05am Ending Time: 10:36am

| **Board Member** | **Attended** | **First Order: Approval of August 11, 2021 Meeting Minutes (Vote)** | **Second Order: REGULATIONS: Further action regarding 105 CMR 316.000, Use of Face Masks and Coverings in Response to the COVID-19 Pandemic. (Vote)** | **Third Order: REGULATIONS: Request to amend, on an emergency basis, 105 CMR 150, Standards for long-term care facilities. (Vote)** | **Fourth Order: REGULATIONS: Request to amend, on an emergency basis, 105 CMR 141, Licensure of hospice programs. (Vote)** | **Fifth Order: REGULATIONS: Request to promulgate, on an emergency basis, 105 CMR 159, COVID-19 vaccinations for certain staff providing home care services in Massachusetts. (Vote)** |
| --- | --- | --- | --- | --- | --- | --- |
| **Acting Commissioner Margret Cooke** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Edward Bernstein** | Yes | Yes | No | Yes | Yes | Yes |
| **Lissette Blondet** | Yes | Yes | No | Yes | Yes | Yes |
| **Kathleen Carey** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Sec. Elizabeth Chen** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Harold Cox** | Yes | Yes | No | Yes | Yes | Yes |
| **Alba Cruz-Davis** | Yes | Yes | Yes | Yes | Yes | Yes |
| **John Cunningham** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Michele David** | Yes | Absent | Absent | Yes | Yes | Yes |
| **Michael Kneeland** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Keith Hovan** | Yes | Abstained | No | Yes | Yes | Yes |
| **Joanna Lambert** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Mary Moscato** | Yes | Yes | Yes | Yes | Yes | Yes |
| **Acting Secretary Cheryl Poppe** | Yes | Abstained | Yes | Yes | Yes | Yes |
| **Summary** | 14 Members Present; 0 Absent | 11 Members Approved; 2 Abstained; 1 Absent | 9 Members Approved: 4 Members Did not Approve. 1 Absent. | 14 Members Approved. 0 Absent. | 14 Members Approved. 0 Absent. | 14 Members Approved. 0 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, September 8, 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; Harold Cox; Alba Cruz-Davis, PhD, MPH; John Cunningham, PhD; Michele David, MD; Keith Hovan; Michael Kneeland, MD; Joanna Lambert; Mary Moscato and Secretary Cheryl Poppe.

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 9:05AM and made opening remarks before reviewing the agenda.

**1. ROUTINE ITEMS**

b. Updates from Acting Commissioner Margret Cooke

Secretary Chen arrives at 9:08am.

Commissioner Cooke proceeded to update the council on the following:

**Commemorating 9/11**

Commissioner Cooke stated that September 11, 2021 marked the 20th anniversary of the 9/11 terrorist attacks that took the lives of nearly 3,000 people. Many observances were held in commemoration, and at DPH, a virtual event was held on 9/9/21 to acknowledge the 20th anniversary of 9/11.  As part of the event, staff recorded and compiled recollections into a montage that will be shared across the Department. She then thanked Veterans Employee Resource Network for planning and hosting the commemoration.

**First Human West Nile Virus Case**

Commissioner Cooke announced three human cases of West Nile virus in the state this year. All were exposed to the virus in Middlesex County. As a result, of these findings, the Greater Boston area and several towns in Bristol and Worcester counties have increased their risk levels for West Nile Virus. The substantial amount of rain in the region in July and the recent hot weather have resulted in an increase in the population of the Culex species of mosquitoes, known to spread West Nile virus.

Commissioner Cooke then stated that residents must practice personal protection, including applying insect repellant when outside, wearing long sleeves and long pants outdoors, and perhaps rescheduling evening activities, to protect ourselves and our families from mosquito bites.

**COVID and Vaccination Update**

Commissioner Cooke stated that 75% of the Massachusetts population had received at least one dose of the COVID vaccine. DPH is focused on the pockets of our state that remain unvaccinated and to do all we can to remove barriers, expand access, and share information that vaccines are the most effective way to protect individuals and families from serious infection, serious illness, and death from the virus.

Commissioner Cooke stated that Governor Baker issued an Executive Order requiring all Executive Department employees to be vaccinated against the COVID-19 virus on or before October 17, 2021. All state employees, including DPH, are required to provide proof of vaccination by October 17.

She then stated that policies regarding masks have been strengthened in public schools and in Early Education and Care settings, where children under age 12 are not yet eligible for vaccination.

**VaxMillions**

Commissioner Cooke stated that in August, the Administration announced the final winners for the last of five drawings for the Massachusetts VaxMillions Giveaway. From June 15, the day VaxMillions was announced, through the last day of registration, over 300,000 residents received a first dose of the vaccine, and over 440,000 residents became fully vaccinated. Five individuals who were vaccinated each received $1 million cash prizes, and five winners between ages 12-17 each received $300,000 scholarship grants.

**Grants to Local Boards of Health**

Commissioner Cooke stated that DPH awarded an additional $1.33 million in grants to help strengthen local public health services in the Commonwealth. In a second round of Public Health Excellence Grants for Shared Services, 7 regional groups of local boards of health will join the 28 that were funded earlier this year. These two rounds of funding will support 221 cities and towns to increase cross-jurisdictional sharing of public health services and staff. The total funding for the 2 rounds equals $8.66 million dollars. The Public Health Excellence Grant Program for Shared Services is designed to address the Special Commission on Local and Regional Health’s recommendations for improved effectiveness and efficiency of local and regional public health.

**COVID Community Impact Survey Update**

Commissioner Cooke stated that certain groups experience disproportionately high rates of housing insecurity, and due to the lack of data, highlighting these inequities is challenging. The DPH COVID Community Impact Survey has received more than 30,000 responses which addresses housing, and this survey is one of the first surveillance efforts to capture the burden of housing insecurity among these groups.

Commissioner Cooke invited the council members to review examples of the disparate impact of housing insecurity by visiting the survey results page at: mass.gov/covidsurvey.

**Overdose Awareness Day**

Commissioner Cooke recognized August 31 as Overdose Awareness Day, which is held to remember the lives lost to overdoses, to dispel stigma surrounding addictions and to offer hope and recognize individuals’ recovery from substance use disorder. DPH worked with fellow agencies to light up all four state-operated bridges, Boston’s South Station, and Government Center to remember the 2,000 people in Massachusetts lost last year to the disease of addiction.

Commissioner Cooke then thanked Deidre Calvert, the Director of our Bureau of Substance Addiction Services, for her commitment to preventing substance use disorder and calling attention to the opioid crisis.

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

No questions or comments from the council members.

**1. ROUTINE ITEMS**

**c. August 11, 2021 Minutes (Vote)**

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

Dr. Cruz-Davis made the motion, which was seconded by Ms. Lambert.

Mr. Hovan and Secretary Poppe abstained. All other members present approved.

**2. REGULATIONS**

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

Commissioner Cooke invited Dr. Catherine Brown, our State Epidemiologist, to present on a request for further action on 105 CMR 316.000. With her was Dr. Larry Madoff, Medical Director for our Bureau of Infectious Disease and Laboratory Sciences.

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

Dr. Kneeland appreciated Dr. Brown’s information and was pleased to hear that science and data will determine future requirements.

Commissioner Cooke stated that DPH will continue to follow the science.

Secretary Poppe stated she agrees with Dr. Kneeland and appreciates that this is continually being studies and may be revisited at another time when indicated.

Ms. Blondet stated that Massachusetts doesn’t seem to be aligned with the CDC guidelines regarding face coverings. She stated that face coverings should be mandated, expressing concern about vulnerable populations, such as older adults, citing her experiences living on Cape Cod.

Dr. Brown stated that MDPH does review CDC guidance, and adapts and applies the information appropriately for Massachusetts and its residents based on data. The CDC must make recommendations for the entire United States, which represents a “huge range of situations,” with varying degrees of COVID-19 severity and varying vaccination rates. She stated that it is appropriate for Massachusetts to continue to review the science, consider the CDC’s recommendations, and apply it in “ways that make sense for the Massachusetts situation.” Regarding Ms. Blondet’s concern about older adults, Dr. Brown reminded the Council that the DPH has an indoor masking advisory in place: individuals that are immunocompromised or who are older adults, or who live with immunocompromised individuals or older adults, are advised to wear face coverings in appropriate indoor settings.

Dr. Madoff stated that he agreed with Dr. Brown’s comments and noted that Massachusetts guidance often goes beyond the CDC guidance for mask wearing for vulnerable individuals and those who are in contact with vulnerable individuals (immunocompromised individuals or older adults).

Ms. Blondet stated concern about being unknowingly being around vulnerable individuals in public, such as in small grocery stores.

Dr. Brown stated that each person is free to choose to wear face coverings and encouraged people to consider their own lives, those they may see around them, and to “make the right choice” for their own specific situation.

Secretary Chen stated she agreed with the current guidance and agreed that this mandate no longer applies for this state. These tools are best used strategically, rather than using a “blunt force approach” as this pandemic is long term.

Dr. Madoff stated that the current policy “normalizes” face coverings, and that everyone now feels comfortable wearing a mask when they choose to do so.

Dr. Cruz-Davis thanked Dr. Brown for the additional data and expressed feeling reassured about how the state is mitigating risk for those who are most vulnerable: older adults, hospitalized individuals, incarcerated individuals, and children who cannot yet be vaccinated. She then asked if Council members could be provided some talking points on the data for their use as “ambassadors.”

Dr. Brown stated that DPH can put together some data to share with the Council members.

Dr. Cruz-Davis stated that she feels reassured with the data discussed and please to hear that there are safeguards in place to protect the most vulnerable populations, and that data is driving these decisions.

Mr. Hovan expressed concern that the emergency repeal was passed by the Council’s vote when the cases were trending down in June 2021. He stated that cooler weather in the Fall will be bringing individuals indoors, which might increase COVID cases and that there are places in the Commonwealth that do not have very high vaccine rates. He suggested modifications to this repeal to maintain indoor masking requirements. He highlighted a lack of data on case rates in particular “corners” of the state.

Dr. Brown stated that the COVID-19 positivity rate (7-day weighted average) for Massachusetts overall is 2.3%, and compared to other states, Massachusetts is in a better place, even in light of the delta variant. She stated that data will be continued to be monitored daily throughout the Fall and this repeal process does not in any way prevent new or additional prevention measures that might be needed in the future. She clarified that vaccination efforts are continuing, that the Department continues to see new people receiving their first doses, and that the Vaccine Equity Initiative is a city-by-city approach to increasing vaccine confidence in particular communities, and that “none of that [work] is stopping.”

Ms. Rebecca Rodman (DPH Senior Deputy General Counsel) stated this regulation is an “outdated instrument” and that based on data, the Department can continue to bring forward recommendations to address issues as they arise. She clarified that the choice at present was to bring the regulation back in its entirety, or to complete the formal regulatory process , which began in June when it was repealed. She clarified that another regulation may be brought forward in the future.

Dr. Kneeland clarified that voting to finalize the repeal of this regulation does not restrict other future regulations or orders.

Ms. Rodman confirmed that was correct.

Dr. Cunningham moved to approve the repeal, and requested that the Department bring forward any additional measures needed at future PHC meetings.

Dr. Bernstein asked Dr. Cunningham to hold his motion to make a comment. He stated that at the August meeting, he was concerned about the messaging to the public with the formal vote to repeal. He stated that “we are not isolated,” that the state is impacted by the entire nation, due to travelers entering the state. He suggested that DPH take a statewide approach, rather than relying on local mandates and continue to mandate face coverings across all settings in Massachusetts. He stated that he would not vote in favor of this repeal.

Dean Cox asked if there are recommendations for modifications that can be made to address the concerns of Dr. Bernstein.

Commissioner Cooke stated that modifications cannot be made to this specific regulation. The only options are to leave it in place, in its full capacity of mandating masking in all indoor and outdoor settings, or to finalize its repeal to follow the state regulation process. She reiterated that there will be opportunities to bring for the additional measures and methods of prevention at another time.

Dr. Bernstein requested clarification about language in the regulation regarding the use of face coverings when social distancing is not possible. Overall, he stated that messaging needs to be clear and he did not think the current regulations go far enough.

Dr. Kneeland stated that he agrees with Dr. Cunningham’s recommendation.

Commissioner Cooke asked Dr. Brown to respond to Dean Cox’s question about which additional measures she would recommend.

Dr. Brown stated that the things that she would recommend are already in place: there are mandatory masking orders in many settings, including health care settings, congregate care, emergency shelter, correctional, day services, etc. There is also an indoor masking advisory for all of those who are immunocompromised or who live with an immunocompromised individual, or an older adult. She stated that households remain the “key place where transmission happens” and that the regulations and measures currently in place are appropriate .She reiterated that DPH will continue to follow the data and make informed decisions for any future recommendations.

Ms. Blondet stated that repealing this regulation does not appropriately protect the entirety of the Massachusetts public.

Dr. Cruz-Davis reminded the Council that they have already voted to repeal this mandate in June, and that at this meeting they are finalizing that process. She clarified that this vote does not preclude the Council from revisiting these issues during future meetings.

Commissioner Cooke agreed and stated that the Department will continue to bring necessary actions to the Council that are needed to respond to the pandemic. She then requested that a vote be taken to finalize the repeal of this regulation.

Dr. Bernstein stated that things have changed since the vote in June and that current data would have informed a different decision.

With no further questions or comments from the council members, Commissioner Cooke asked if there is a motion to approve to finalize the repeal of 105 CMR 316.000.

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

Dr. Bernstein, Mr. Hovan, Dean Cox and Ms. Blondet opposed.

All other members present approved.

Commissioner Cooke stated that the repeal of 105 CMR 316.000 was approved.

**3. REGULATIONS**

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

Commissioner Cooke invited Marita Callahan, Director of Policy and Health Communications for the Bureau of Healthcare Safety and Quality, to present on a request to further amend, on an emergency basis, the Department’s regulations addressing standards for long-term care facilities. Dr. Kate Fillo, Director of Clinical Quality Improvement, was also in attendance.

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

Dr. David arrived at 10:07am.

Ms. Moscato asked if independent contractors or other types of outside personnel (such as construction) at long term care facilities would be required to be vaccinated under this amendment.

Ms. Callahan stated that independent contractors who have a contract with a facility would need to be vaccinated, and deferred to Dr. Fillo regarding other personnel.

Dr. Fillo stated that the definition that DPH uses closely aligns with Federal recommendations and that these requirements have been used for healthcare personnel influenza vaccination over the past decade. She clarified that contractors who hold contracts with the facility and who are regularly coming into the building would need to provide vaccinated personnel for these sites.

Dr. Cunningham asked for clarification on reasons for exemption to decline vaccine, that it’s for individuals with medical restrictions or strongly held religious beliefs, and who are also able to perform their job duties in other capacities.

Ms. Rodman stated that the requirement for being able to perform other work duties applies to both exemptions.

Dr. Carey stated that long term care facilities have vulnerable populations with physical limitations and expressed concern about residents not being able to follow personal prevention measures such as social distancing. She also expressed concern about the impact of this mandate on staffing shortages and noted that the Department will need to follow this impact carefully.

Dr. Cunningham asked for clarification on the requirements and stated that a vaccine, unlike masking, cannot be removed once you leave work. He asked for confirmation that this does not make this mandate unlawful.

Ms. Callahan stated that there are currently requirements in the long term care facility regulation requiring other vaccines, such as influenza and tuberculosis, so this is an expansion upon existing requirements.

Ms. Rodman stated that there is no standard restricting mandates for things that you “cannot undo.”

Commissioner Cooke asked Dr. Fillo to respond to Dr. Carey’s comment about staffing.

Dr. Fillo stated that staffing levels are followed very closely in long term care facilities, particularly for nursing facilities and rest homes. DPH has requested that facilities alert the Department if they are experiencing a staffing shortage, and the Department helps to provide temporary staffing support. Citing skilled nursing facilities, which are further along with their vaccine mandate, Dr. Fillo noted that DPH has seen “a tremendous number of staff who have been willing to be vaccinated since the mandate went in place.” She noted that there has been nearly a 10% increase in nursing home staff that have received their first vaccine. She also explained that the Department works with nursing homes and rest homes where staff are still not vaccinated, to help understand the underlying reasons for vaccine hesitancy, and to connect them with colleagues who speak their same language, or have the same background, who can speak to them about their concerns.

Dr. Bernstein suggested that all health care providers be required to be vaccinated to protect those industries from staffing shortages, as this would prevent healthcare workers from being able to move from one facility or sector to another to avoid such mandates.

Dr. David stated that she agreed with Dr. Bernstein’s recommendation and fully supports his statement.

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

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

All other present members approved.

Commissioner Cooke stated that the amendments to 105 CMR 150, were approved, on an emergency basis.

**4. REGULATIONS**

**c. Request to amend, on an emergency basis, 105 CMR 141, Licensure of hospice programs. (Vote)**

Commissioner Cooke invited Marita Callahan and Dr. Kate Fillo to present on a request to amend, on an emergency basis, the Department’s regulations addressing licensure of hospice programs.

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

Ms. Moscato asked if this regulation covers all aspects of hospice care, including community based in-home residential hospice care.

Ms. Callahan stated that it would apply to any setting where a hospice program is occurring, including inpatient hospice programs, or any other setting that a hospice program is providing hospice services, such as in a residence, a long term care facility, or any other residential setting.

With no further questions, Commissioner Cooke asked if there is a motion to approve, on an emergency basis, amendments to 105 CMR 141.

Mr. Hovan made the motion, seconded by Secretary Chen. All other present members approved.

Commissioner Cooke stated the amendments to 105 CMR 141 were approved, on an emergency basis.

**5. REGULATIONS**

**d. Request to promulgate, on an emergency basis, 105 CMR 159, COVID-19 vaccinations for certain staff providing home care services in Massachusetts. (Vote)**

Commissioner Cooke invited Marita Callahan and Dr. Kate Fillo to present on a request to promulgate, on an emergency basis, the Department’s regulations addressing Home Care, 105 CMR 159.

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

Ms. Moscato expressed support of this regulation to protect older adults and patients of these facilities, who receive care at all levels.

With no further questions, Commissioner Cooke asked if there is a motion to approve, on an emergency basis, amendments to 105 CMR 159.

Dr. Bernstein made the motion, which was seconded by Ms. Moscato.

All other members present approved.

Commissioner Cooke stated the motion to promulgate 105 CMR 159 was approved, on an emergency basis.

With no further questions, Commissioner Cooke reminded Council members the next meeting would be held on Wednesday, October 13, 2021.

Commissioner Cooke asked if there was a motion to adjourn.

Dr. Cruz-Davis made the motion, which was seconded by Ms. Blondet. All members present approved. The meeting adjourned at 10:36am.