



Assisting Massachusetts Boards of Health through
training, technical assistance and legal education

MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19 Local Public Health Emergency Powers 3.20.2020

Public health professionals, especially local health departments and boards of health, are facing many questions from local public officials, residents, parents, health care providers, and others about COVID-19. MAHB's series of documents are meant to provide answers and guidance to health departments and boards of health. **This document is provided *for educational purposes only* and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.**

QUESTION: What local emergency powers exist for cities and town to close businesses that provide personal care services that require sustained physical contact and cannot comply with social distancing?

ANSWER: On March 10, 2020, Governor Baker declared a state of emergency in Massachusetts to "facilitate and expedite the use of Commonwealth resources and deployment of federal and interstate resources to protect persons from the impacts of the spread of COVID-19." (Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19, [available at https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19](https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19)). As a result of the declaration, the Governor has taken the following steps to date:

- Suspended Elementary and Secondary School Operations from March 17, 2020 until April 6, 2020;
- Limited gatherings of individuals to 25 individuals;

- Prohibition of on-premises consumption of food and/or alcohol effective from March 17, 2020 until April 6, 2020;
- Placed restrictions on hospital visits, including a limitation of one visitor at a time, increased hand hygiene, a prohibition of visitors under the age of 18, and other restrictions;
- Placed restrictions on assisted-living-facility visits, with guidelines being issued by DPH (available at <https://www.mass.gov/info-details/covid-19-guidance-and-directives#for-long-term-care-facilities>) and the Executive Office of Elder Affairs (available at https://www.mass-ala.org/wp-content/uploads/2020/03/ALR-COVID-19-Guidance-03-11-20-_1_.pdf);
- Issued a Pharmacy Hand Sanitizer Order permitting pharmacists to compound and sell hand sanitizer that conforms to FDA requirements;
- Cancelled non-essential elective hospital procedures;
- Extended Registry of Motor Vehicles renewal timelines of certain credentials;
- Required that all insurers cover medically necessary telehealth services related to COVID-19;
- Modified certain requirements of the Open Meeting Law to enable state and local governments to carry out essential functions, including remote participation in meetings;
- Placed restrictions on Nursing home visits;
- Modified policies for nursing licensure applications to expedite processing of reciprocal licenses; and
- Expedited credentialing procedures for licensed independent practitioners.

Since the Governor’s declaration of a state emergency, some cities and towns have issued their own “emergency declarations.” The Governor’s authority to issue emergency declarations is clear pursuant to the Civil Defense Act of 1950. The authority of the Chief Executive Officer (CEO) of a municipality—typically the Mayor, City Council, City Manager, Board of Selectmen or Town Manager—to declare an emergency is found in this same act.¹

However, the authority of the Board of Health to respond to public health emergencies is not clearly delineated in one law, but instead is embedded in many different state laws and regulations. The legal authority for Boards of Health to respond to the spread

¹ 1950 Mass. Acts 520.

of dangerous and infection diseases is found in sections 95 through 105 of Chapter 111, of the Massachusetts General Laws, which address (i) monitoring and tracking people infected and people exposed to those infected, including the use of isolation and quarantine orders; (ii) reporting requirements; and (iii) means boards of health can use in protecting public health.

In implementing the above-described sections of the law, a board of health must use the least restrictive measure(s) available to accomplish its goal. Members of our society enjoy certain constitutionally protected individual rights. When the government restricts rights, it must carefully weigh the rights of individuals versus the obligation to protect public health. The Massachusetts Supreme Judicial Court has made it clear that “[t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means.” Druzik vs. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd of Registration on Med., 239 Mass. 424, 428 (1921)).

City and town attorneys are solely responsible for providing legal advice to their clients and MAHB urges boards of health and other municipal officials to consult with them prior to issuing any emergency orders. Massachusetts General Laws Chapter 111, Section 104 permits “the selectmen and the board of health [to] use all possible care to prevent the spread of [an] infection” that is dangerous to public health. (See Mass. Gen. Laws. ch. 111, § 104). Typically, the CEO declares a public health emergency and the Board of Health issues orders pursuant to that declaration. However, as stated above, municipal attorneys are the only attorneys who can provide legal advice on these topics.

Currently many municipalities, including but not limited to, Boston, Walpole, Worcester, Brookline, Somerville, Marlborough, Medford, Weymouth, Malden, and Winchester have issued Executive Orders that declare public health emergencies and complement the statewide order. Brookline’s order limits lines at retail stores to 10 people or less, except in grocery stores and pharmacies. Somerville closed all social clubs until at least April 6, 2020.

Several boards of health, like those in Malden, Medford and Winchester, have ordered that all services offered to the public that require sustained physical contact and cannot comply with social distancing requirements be closed until further notice. These orders, which are available on the municipalities’ websites, apply to services like hair salons, barber shops, nail salons, and tattoo and massage establishments.

Guidance on board of health legal authority pursuant to the nuisance laws and pursuant to the legal authority to enact reasonable public health regulations will follow.

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