

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL COMMITTEE ON CODES, REGULATIONS AND LEGISLATION MEETING
JANUARY 26, 2023 10:00 AM
ESP, CONCOURSE LEVEL, MEETING ROOM 6 ALBANY
90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Mr. Kraut If everybody would take their seats, we're ready to begin. Patsy, I think you'll open up. Before we start the meeting, I want to call to meeting. We're going to have the Committee Day agenda for the Special Committee Meeting on Codes, Regulations and Legislation. It's going to be followed by a Special Meeting of the Health Planning and Planning Council, Public Health Planning and Health Planning Council. We will return and go back to the Committee Day Activities of the Establishment and Project Review.

Mr. Kraut Before I begin, I just want to make a general comment that you will see that several of the members and staff, we have computers open in front of us and it's not that.... The concern was we're not paying attention to the meeting. The fact of the matter is we are not printing the material for the meetings. Each of our meetings has a book of... Today's is 373 pages. We received about 40 pages of comments on various projects. We're not playing solitaire. If you happen to see us glancing at a computer screen, we are trying to follow our notes and the project review material that we were given and had read before the meeting. I just want to make that for those of you watching and participating since I received some interesting comments.

Mr. Kraut Dr. Yang.

Dr. Yang Good morning. I'm happy to call to order the Committee on Codes, Regulations and Legislation. My name is Patsy Yang. For the members of the public, please limit your comments to three minutes or less. The presenters will be limited to one person per organization.

Dr. Yang Is that better?

Mr. Kraut Just a little closer. That's fine.

Dr. Yang Be prepared to deliver your comments promptly when we call your name and you might want to move closer to the front to the microphone.

Dr. Yang Thank you.

Dr. Yang We have one regulation on the agenda this morning for emergency adoption. It's the hospital and nursing home, personal protective equipment or PPE requirements. May I have a motion for recommendation for adoption?

Mr. Kraut So moved.

Dr. Yang Mr. Kraut.

Dr. Yang Do we have a second?

Unknown Speaker Second.

Dr. Yang We have Ms. Jaclyn Sheltry and Jonathan Karmel from the state health departments up in Albany to provide us with information about this proposal.

Ms. Sheltry Hi. This is Jaclyn Sheltry in the Department of Health. The regulations overall are coming to you before as an emergency adoption and overall they remain unchanged in several significant components as prior iterations that have come before this council. I won't get into too much of the substance of the underlying regulation, but I will share that in general, they do require a 60 day PPE supply for both hospitals and nursing homes, just as prior iterations and again for hospitals, the Commissioner has discretion to increase the PPE supply amount to 90 days. Again, the regulations continued to require four different types of PPE, that is, gloves counted as single count, gowns, surgical masks and N95 respirator masks. Additionally, the regulations continue to use the underlying Johns Hopkins 2022 methodology. Toward the end of my presentation, I will discuss in further detail what the department did to assess other alternative methodologies. First, I do want to discuss the changes that we did make to these emergency regulations. The changes we made were in response to three kind of recurring arguments we've heard in the past and additionally when we did additional stakeholder output, and that is response to concerns about PPE waste, address arguments from nursing home stakeholders that using, quote, certified beds as a multiplier yielded unreasonably high PPE counts. Finally, to respond to concerns about warehousing PPE onsite that it is costly and in some cases minimizes the use of certified facility space, for instance, communal spaces in nursing homes. In light of those comments, I will go through the changes that the department did make both to the hospital and nursing home components. With respect to Section 405.11 concerning hospitals we made four key changes. First, there are two central changes we made to the staff bed multiplier. The regulations now require the department to periodically recalculate the number of staffed beds and allows the Commissioner to use a bed multiplier other than staffed beds if necessary, such as certified beds or something lower than a staff bed amount. Second, the hospital regulations allow PPE to be stored offsite if the offsite storage is in state and accessible within 24 hours. Additionally, there must be an onsite PPE supply of at least 10 days under the underlying methodology. Additionally, the regulations clarify that offsite storage may be held by a third party vendor, provided that the facility and vendor have an agreement requiring the vendor to maintain an unduplicated facility specific stockpile for the facility that the vendor agrees to maintain at least a 60 day stockpile, minus whatever the facility has on site. Finally, the PPE must be accessible by the facility 24 hours a day, 7 days a week, year round. Third, for the hospital regulations, we changed language regarding rotation of PPE stockpile that existed in prior versions to now, quote, strongly encourage providers to

rotate through their PPE stockpile to reduce waste. Finally, the hospital component of these regulations expressly allows the Commissioner to have authority to amend the regulations should an alternate methodology that is appropriate for New York and adequately ensure the safety of hospital staff and patients is developed. Regarding the nursing home changes under Section 415.19, they largely mirror the changes that we went through in the hospital components. First, for the nursing home regulations, we have changed the multiplier of certified beds to quote the nursing homes average census as determined annually by the department. Secondly, these regulations allow PPE to be stored offsite if in-state and accessible within 24 hours under the same conditions that I discussed for the hospital regulations. Again, for the nursing home regulations, we now, quote, strongly encourage providers to rotate through their PPE. Again, like with the hospital regulations, we've added a clause giving the Commissioner authority to amend the regulations should an alternate methodology that is appropriate for New York and would adequately ensure the safety of nursing home staff and residents is developed. I will briefly comment on the solicitation the department conducted in order to assess whether an alternate methodology is available now and fitting for both hospitals and nursing homes. I'm happy to address specific questions from the members beyond what I share right now. In general, on both December 2nd and December 14th, the department sent letters to nursing home associations, hospital associations, several different health care worker labor unions, medical societies in the state, as well as individual hospitals and health systems. The responses were in total by December 30th. We received twenty comments from a county health department, medical society, eleven individual hospitals, three health systems, and four either hospital and or nursing home associations. Overall, the vast majority of the recommendations, I should say. We're recommending that the department use HHS's model for hospitals or the CDC burn rate calculator. Only the latter is applicable both to hospitals and nursing homes. The department consulted with experts and subject matter experts within the department and decided that neither of those two methodologies were fitting for hospitals or nursing homes for various reasons, which is why we have stuck with the 2022 Johns Hopkins methodology. I will stop there. Like I said, I'm happy to answer any specific questions about the other methodologies we considered.

Dr. Yang Thank you.

Dr. Yang Dr. Berliner.

Dr. Berliner Just a question about the prohibition on storing materials outside of the state. We have at least two hospitals in the state who were owned or controlled by entities in other states, one in Vermont and one in the Southern tier in Pennsylvania. In some cases, those places are closer to where the hospitals would be than someplace else within New York State. I'm just wondering, I mean, I guess I understand you don't want them stored in California, but what's the problem with that? Any special circumstances that might allow for that?

Ms. Sheltry We acknowledge that some facilities, as you said, are close to border states. However, we're really out of that provision in light of lessons learned from the pandemic. Specifically, for instance, early on in the pandemic, there were some governors in other border states that wanted to retain control over any PPE that was within their borders, within their jurisdiction. Allowing the in-state component ensures that we have jurisdiction if a crisis arises over PPE stored within New York State.

Dr. Berliner Thank you.

Mr. Kraut I want to compliment the department for responding to the issues that were raised at previous Codes Committee regarding this particular regulation. Our request that you try to find a methodology that was more appropriate to ensure consistent access, because we did feel that the current methodology is somewhat flawed. I think the modifications you made go a long way. What I would say now, it's incumbent on the industry impacted by this to probably solicit an academically based, using evidence-based methodologies to produce and publish something that the state can rely on instead of relying on individuals' opinions and the like. We did receive comments just acknowledging from Leading Age, which also acknowledged the benefit of moving to annual occupancy. Both the nursing home and the hospital industry impacted by this; I think they have to help find a methodology that will be acceptable to the state.

Dr. Yang Thank you, Mr. Kraut.

Dr. Yang Are there any other comments from the committee or the council?

Dr. Bennett I have one quick question, Dr. Yang.

Dr. Yang Yes.

Dr. Bennett I was wondering how long this regulation will stay in effect.

Ms. Sheltry It's an emergency regulation, so 60 days after adoption.

Dr. Bennett Okay.

Dr. Bennett Is it our end goal to actually adopt this through state legislature?

Ms. Sheltry Right now, there's no plans to permanently adopt this regulation. We can make that decision later on, as I said, during the 60-day window. However, at this point in time, like Mr. Kraut said, we are continuing to be open to other methodologies. We'll use this 60 day window to assess whether this regulation should be adopted permanently or whether there are new methodologies that arise and then therefore require changes to this regulation. It'll be a kind of work in progress over the next 60 days.

Mr. Kraut So, Jackie, this is going to come back to us in two cycles?

Ms. Sheltry Yes.

Dr. Yang Any other comments or questions from the council or committee?

Dr. Yang From the members of the public, we have Leland up in Albany, I think, who asked to speak.

Speaker 1 Thank you for the opportunity to speak. I would like to speak today on the subject of the general consensus regarding what is good health care practice, not just with respect to protective equipment, but with respect to the general protocols.

Mr. Kraut Excuse me. You need to limit your comments to the PPE regulation.

Speaker 1 Thank you, Mr. Chairman.

Speaker 1 As a result of the investigation that has begun in Washington, DC into the origins of the coronavirus and the response to the coronavirus nationally and internationally, I thought it might make sense for us to bring up the question of the positivity rate and whether or not the PCR test is an accurate way of measuring positivity rates. I also feel like it's important for us to talk about the general reliability of the health care system and the perception among the public about whether or not the health care protocols that are adopted by the State of New York and the CDC are actually working or are demonstrably in the best interests of the people. I'm here once again with tragedy in my family. I have a sister in law who's just been operated on for blood clots. I have a friend, a teacher, colleague of mine, in a teacher training program whose husband recently died very shortly after the injection of sepsis. He was placed in a hospital and in 10 days died. Unfortunately, while the protective equipment question is important, it falls into the general context of whether or not the health care systems response to COVID-19 is working well. I just wanted to bring that significant issue to everybody's attention today, because I think while protective equipment may be an important part of this conversation, the positivity rate, which is used as a calculator and the nursing home decisions is questionable. The question about whether or not masks are working and are important is also questionable. These issues result in huge amounts of public question about whether or not what we have happening in New York State and around the country as a health care response is actually effective. I would also like to wish everybody a happy New Year. I know that my comments aren't always welcome or considered appropriate under the circumstances. Yet, since I only have this venue with which to speak to the Health Commissioner, to the Governor's staff, and to the members of the profession, I take the opportunity with many thanks.

Dr. Yang Thank you.

Dr. Yang Any other members of the public wish to make comment about this emergency regulation?

Ms. Sheltry This is Jackie. I apologize for interrupting you. I just wanted to make one clarifying comment, if I may before you close. I just wanted to correct one of the statements I said to Dr. Watkins earlier, because these are new emergency regulations have been revised, they're actually going to be in effect for 90 days, not 60 days. I apologize.

Dr. Yang Any other comments or questions?

Dr. Yang We're going to call the vote for the committee members.

Dr. Yang All in favor?

All Aye.

Dr. Yang Any opposed?

Mr. Kraut Just for the record, we had Dr. Lewin and Dr. Watkins in Albany of voting affirmatively. Dr. Yang, myself and Dr. Soto voting affirmatively in New York.

Mr. Kraut The motion passes.

Dr. Yang Thank you.

Mr. Kraut That ends the Codes Committee.

Mr. Kraut We do not have a quorum. We're waiting on one member to arrive to call a meeting of the Public Health and Health Planning Council. I will proceed on the agenda and call Establishment and Project Review. Once that member arrives, I will ask Mr. Robinson to suspend the meeting for the moment and call the full council meeting into order to vote on the Codes Committee report, and then we'll return to the Establishment Committee. If you followed that is just we're just trying to keep the day going, that's all. Trust me, I'm doing my best.

Mr. Kraut Robinson.