

CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
MEETING OF THE BOARD OF HEALTH

Thursday, January 9, 2020

The Philadelphia Board of Health held a public meeting on Thursday, January 9, 2020 in the Municipal Services Building, 1401 John Fitzgerald Kennedy Boulevard, Room 1450.

Board Members Present:

Tyra Bryant-Stephens, MD
Ana Diez-Roux, MD, PhD, MPH
Thomas Farley, MD, MPH
Marla J. Gold, MD
Jennifer Ibrahim, PhD, MPH
Scott McNeal, DO
John Rich, MD, MPH

Attendees:

Cheryl Bettigole, MD
James Garrow
Jeffrey Hom, MD
Yolanda Lockhart-Davis
Joshua Roper

WELCOME AND INTRODUCTIONS

Health Commissioner and Board President Thomas Farley, MD called the meeting to order at 5:36 p.m. Dr. Farley asked for comments and questions about the minutes of the meeting of the Board of Health held on December 12, 2020.

Dr. Farley mentioned that updated minutes had been circulated and asked if there were any other changes that needed to be made. Dr. Gold asked if future minutes should specify the speaker during discussion and when asking questions. Dr. Farley noted that the Board releases summarized minutes and not a transcript. Dr. Rich suggested that if a Board member wanted the minutes to reflect that they had a particular view, that could be stated and that would allow for attribution. Dr. Gold felt that was acceptable. Dr. Farley asked for a motion on this issue. Dr. Gold moved, and Dr. McNeal seconded the motion.

Dr. Farley motioned to approve the minutes. Ayes were recorded, no nays were recorded.

Motion passed.

TOBACCO SALES PERMITS NON-RENEWAL NEWS STORY

Dr. Farley mentioned to the Board a series of news media stories referring to the Health Department's not renewing a number of tobacco sales permits. He mentioned that this action

followed regulations passed by the Board in 2016 intended to cap the number of tobacco outlets in Philadelphia because of the over-concentration of them, especially in low-income, minority neighborhoods. The “three strikes and you’re out” part of the regulation went into effect in 2017, and after two years of youth sales compliance checks, a large number of outlets were not able to renew their permits. Dr. Farley noted that youth tobacco test purchases lead to tobacco sales between 25% and 35% of the time.

- **How many stores and what proportion were not able to renew their tobacco sales permit?**
 - 149 stores, or about 6% of the 2,600 in Philadelphia.
- **What percentage of those that were not able to renew was because of the “three strikes” rule?**
 - All of them.

E-CIGARETTE REGULATIONS

Dr. Cheryl Bettigole reviewed the bill, which prohibits the sale of any e-cigarette with more than 20 mg/mL or more of nicotine salts, any e-cigarette in a flavor other than tobacco, and any cartridges, pods, or e-liquids with more than 20 mg/mL or more of nicotine salts or in a flavor other than tobacco. There is a carve-out for adults only stores, which are not subject to these restrictions. There is a penalty of \$250 for violations enforced through regular process, and two more violations will result in the loss of a store’s adults only status and loss of the tobacco sales permit.

This bill also charges the Health Department with maintaining a list of not restricted e-cigarette items and distributing adults only e-cigarette device permits to qualifying institutions. The unrestricted list will be available on the internet. Items can be added to the unrestricted list if a retailer submits information that proves the items do not have more than 20 mg or more of nicotine salts and do not have flavors other than tobacco.

Dr. Gold asked a clarifying question about the list, that this isn’t a list of “approved” products. Dr. Bettigole said this is instead a list of products that the Health Department is aware of that are unrestricted. The Health Department has begun work on populating that list but is dependent upon retailers submitting additional items to be considered unrestricted.

Dr. Bettigole then described adults-only establishments as requiring a formal, written employee training and protocol on how a facility is going to keep minors out of the premises. This could include a staff member stationed at the door, checking identification. Compliance checks will function like current youth tobacco sales compliance checks. If a youth is able to gain entry to the store or if proper signage is not posted, that will be considered a violation. The Health Promotion Council is coordinating the compliance checks.

These new laws are both in an educational period. The law on flavored cigars and cigarillos will be enforced starting February 20. A warning period for the e-cigarettes law begins March 20, and ticketing will begin June 20.

Dr. Bettigole then opened the floor to questions from the Board.

DISCUSSION

- **Why was the 20mg/mL level chosen?**
 - The 20 mg/mL nicotine level was chosen because European nations ban the sale of products above that level.

- **Is the Health Department maintaining a list of unrestricted items an unnecessary burden?**
 - It is necessary for the Health Department to maintain this list. Having a public list of what is allowed gives inspectors the ability to point to a list and tell retailers that if a product is not on the list, it is restricted. That way there is no disagreement during the inspection, and the burden of proving that something should be added to the list belongs to the retailers.

- **Could there be an adults-only section of a store, to get around the adults only requirement?**
 - It has to be a separate establishment, not just a section of a store. The Health Department has to approve these locations, and would not allow the addition of an adults only section.

- **Can a child be escorted into an adults only store?**
 - No children are allowed to enter into the store.

- **What is the responsibility for checking identification?**
 - The retailer must put in place systems to not allow minors to enter, which would require an identification check. The youth doing compliance testing will do it in the same way as they currently do for youth tobacco sales compliance checks. If they are asked to show ID, they need to show their own, real ID card. We've seen that retailers will sometimes ask for ID, be presented with an underage ID, and still sell to the youth, which is a violation.

Dr. Bettigole then walked the Board members through the regulation, point-by-point.

- **If a store has a violation under the e-cigarette law, does that count toward the three-strikes rule talked about earlier?**
 - The adults only stores are only allowed two violations for youth entry, after which they will lose their adults only permit and their tobacco sales privileges. Regular tobacco retailers that are caught selling products that are not on the unrestricted list twice will lose their tobacco sales permits.

- **How often will compliance checks happen?**
 - All tobacco retailers are currently checked for youth sales at least once a year, and if they are found to be in violation, they are rechecked within 30 to 90 days.

- **If a product was on the unrestricted list, but due to a formulation change is taken off the list, is there a process for notifying retailers?**
 - Yes. The Health Department has email addresses for all tobacco retailers in the city now, and regularly communicates with them that way, in five different languages.

- **Is there anything that the Health Department can do to ensure that retailers that legitimately believe their products should be on the unrestricted list are not penalized?**
 - The Health Department is not looking to penalize the retailer who has one box on the shelf that is questionable. Inspectors going to regular tobacco retailers are being taught to look for whole shelves of product that advertise nicotine levels above 20mg/mL, or flavors. The unrestricted list will help with this: if a retailer is issued a ticket and contests it, the Health Department has the ability to refer to the list to determine whether sale of the product was allowed.

- **If a retailer is ticketed for selling a product that is not on the unrestricted list, can he or she submit the necessary documentation to the Health Department to have it added to the list so they can sell it in the future?**
 - Yes.

- **Does the City have the ability to lower the restricted levels of nicotine, from 20 mg/mL to 15 mg/mL for example, if future research shows that the lower level is safer?**
 - City Council would need to pass new legislation to make that kind of change.

- **Does the law say that retailers can only sell products on the unrestricted list, or that they cannot sell products with more than 20 mg/mL?**
 - The law says that the only products that can be sold in a non-adults only store are those on the unrestricted list.

- **If a manufacturer creates a new product that meets the criteria to be sold in stores, it would still be considered restricted until it was submitted to be included on this list, correct?**
 - Yes, the Health Department believes that they will begin to hear from manufacturers and corporate offices to have items included on the unrestricted list.

- **How many establishments would apply for the adults only designation?**
 - That is unknown now, however, the Health Department speculates that it be about forty, based on the fact that there are about forty vape shops.

- **Will there be a notation on the unrestricted list that says that inclusion on this list is not an endorsement?**
 - That’s the rationale behind calling this the “unrestricted” list and not the “approved” list. The Health Department does not approve of these items, they are just not restricted from being sold.

- **Is it possible to not post the list online so it’s not like an advertisement for those products?**
 - The Health Department needs to post the list online. There are 2,600 retailers, and we need to make it available to them all.

- **What is the timeline for this regulation?**
 - Should the Board pass the regulation today, it will be filed next week, which starts a thirty-day public comment period during which time the public can make comments and/or request a public hearing. If a public hearing is requested, the Board will schedule a hearing in the next couple of weeks, then an additional Board meeting to resolve what was heard during the public comment period and public hearing. After that Board meeting, a report is filed including any amendments that were agreed upon, and then ten days later, the regulation is placed into effect. About two to three months in total. Ticketing would commence on June 20, so there is plenty of time for this process to play out.

Dr. Farley asked for a motion on the regulations. Dr. Ibrahim moved to approve the regulations as written. A Board member seconded the motion. Dr. Farley asked for ayes. Mr. Roper interjected that the law number may change as it is added to the Philadelphia Code and ensured the Board that this small technical change would not affect the process of this vote. Dr. Farley asked for ayes, ayes were recorded, no nays were recorded.

Motion and regulation passed.

Dr. Bettigole thanked the Board for their work on the Homicide Death Review Committee, which will meet for the first time on January 27th. Dr. Ibrahim asked for an update on the Committee at a future meeting.

Dr. Gold asked for an update on the topic of neonatal abstinence syndrome. Dr. Ibrahim said an update was forthcoming in Spring 2020. Dr. Farley said that updates would be provided at a future meeting.

NEW BUSINESS

No new business.

ADJOURNMENT

Dr. Farley adjourned the meeting at 6:27 p.m.