



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

## MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19

### ***Guidance on Stores that Sell Essential Goods and Non-Essential Goods April 17, 2019***

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 can/should local boards of health do about stores that sell both essential and non-essential goods?**

**Answer: Guidance issued by the Executive Office of Housing and Economic Development by means of a list of "Frequently Asked Questions" indicates that stores that sell essential items can remain open if the essential items are the "primary goods" sold at the store.<sup>1</sup>**

Essential items include, but are not limited to, food, diapers, cleaning supplies, prescriptions, other medical supplies, hardware supplies, and home appliances. Although there does not appear to be further guidance for the categorization of items as the "primary goods" sold at a store, it is this author's opinion that if a store sells a majority of these essential items, it can stay open. However, stores need to assure social distancing measures are practiced. Customers should be at least six feet apart and customers should be wearing face coverings. Further, all residents should be complying with the Governor and Department of Public Health's Stay-at-Home Advisory.<sup>2</sup>

Additional guidance specific to grocery stores was issued by the Executive Office of Health and Human Services on April 7, 2020. The guidance indicates that since grocery stores are a critical provider of food and other essential products. "[l]ocal boards of health are advised to minimize the application of specialized rules that dictate which products may or may not be offered for sale to the public and how those products may be displayed. Where local boards of health have particular concerns about individual products, the board should

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<sup>1</sup> EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT, COVID-19 Essential Services FAQs (updated April 14, 2020), [available at https://mass.gov/info-details/covid-19-essential-services-faqs](https://mass.gov/info-details/covid-19-essential-services-faqs)

<sup>2</sup> DEPARTMENT OF PUBLIC HEALTH, DPH Public Health Advisory: Stay-at-Home Advisory (March 24, 2020), [available at https://www.mass.gov/news/dph-public-health-advisory-stay-at-home-advisory](https://www.mass.gov/news/dph-public-health-advisory-stay-at-home-advisory).

consult with store operators to discuss the value of special safety protocols to reduce risk.”<sup>3</sup> It might be reasonable to apply this guidance to stores like Target and Walgreens.

In a nutshell, residents should not go to Target to buy a new pair of shoes or a new necklace because this conflicts with the Stay-at-Home Advisory; those items are not essential. But if a resident needs food and a prescription filled, the trip to Target is necessary. In that case, the resident can go to the store, as long as social distancing is practiced, including hopefully wearing a face covering while in the store.

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<sup>3</sup> <https://www.mass.gov/doc/order-grocery-stores-40-percent/download>