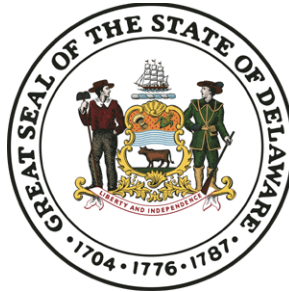


State of Delaware



Executive Department
Dover

TWENTY-EIGHTH MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT

WHEREAS, on September 3, 2020 at 7:00 p.m. E.D.T., I issued the Twenty-Seventh Modification to the State of Emergency, combining all active COVID-19 restrictions into a single order (as used herein the “Omnibus Modification”); and

WHEREAS, on September 25, 2020 at 2:00 p.m. E.D.T., I issued the First Revision to the Omnibus Modification to, among other things, lift the suspension on FOIA responses and permit extension of certain state employee leave policies; and

WHEREAS, on November 5, 2020 at 2:00 p.m. E.D.T., I issued the Second Revision to the Omnibus Modification to lift additional restrictions on bar service in beach towns from Lewes down to Fenwick Island; and

WHEREAS, on November 20, 2020 at 3:45 p.m. E.D.T., I issued the Third Revision to the Omnibus Modification to formally impose restrictions on indoor and outdoor gatherings, and reducing occupancy in restaurants to no more than thirty percent (30%); and

WHEREAS, on December 10, 2020 at 5:00 p.m. E.D.T., I issued the Fourth Revision to the Omnibus Modification imposing additional restrictions to confront the winter surge of COVID-19 hospitalizations in Delaware; and

WHEREAS, on January 8, 2021 at 10:00 a.m. E.D.T., I issued the Fifth Revision to the Omnibus Modification lifting the curfew placed on bars and restaurants and allowing sports to resume with restrictions; and

WHEREAS, on February 4, 2021 at 9:00 a.m. E.D.T., I issued the Sixth Revision to the Omnibus Modification easing COVID-19 occupancy restrictions and requiring Delaware vaccination providers to report demographic information within 24 hours of administering a vaccine to the Delaware Immunization Information System; and

WHEREAS, on February 19, 2021 at 9:00 a.m. E.D.T., I issued the Seventh Revision to the Omnibus Modification further easing COVID-19 occupancy restrictions and increasing gathering limits for indoor events with restrictions in place to prevent spread of COVID-19; and

WHEREAS, on March 29, 2021 at 1:00 p.m. E.D.T., I issued the Eighth Revision to the Omnibus Modification further increasing gathering limits for outdoor events with restrictions in place to prevent spread of COVID-19; and

WHEREAS, on April 1, 2021 at 12:30 p.m. E.D.T., I issued the Ninth Revision to the Omnibus Modification updating public health requirements for youth and amateur sports; and

WHEREAS, on April 27, 2021 at 4:00 p.m. E.D.T., I issued the Tenth Revision easing outdoor table size restrictions in restaurants, and suspending certain Delaware Interscholastic Athletic Association sports masking regulations; and

WHEREAS, Delaware continues to use a multi-step process to ease restrictions on businesses and gatherings, formulated in close consultation with public health officials to ensure

that the core principle of controlling the spread of COVID-19 is considered at a time when the State must continue to exercise heightened caution; and

WHEREAS, the State has thus far administered over 816,000 doses of COVID-19 vaccines to individuals that live, work, and are educated in Delaware, and as of May 11, 2021, has deemed all individuals ages 12 and older as eligible to receive the vaccine; and

WHEREAS, Delaware's vaccination efforts warrant lifting some restrictions, but it is still appropriate to maintain certain mitigation protocols to ensure spread is limited while dissemination of the vaccine continues; and

WHEREAS, it is critical that individuals and businesses in Delaware continue to follow social distancing, masking, and other infection control protocols while vaccine administration is ongoing in the State; and

WHEREAS, in the interest of protecting the citizens of this state from a public health threat, the Governor is authorized by law to issue an order reasonably necessary to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders, rules, or regulations of any state agency, where strict compliance with such provisions may hinder necessary action in coping with the emergency; and

WHEREAS, to ensure the efficient and effective communication of the suspension of certain regulatory and procedural rules and statutory provisions caused by the COVID-related public health threat to Delawareans, it has become necessary to consolidate all requirements related to the State of Emergency into one Modification.

NOW, THEREFORE, I, JOHN C. CARNEY, pursuant to Title 20, Chapter 31 of the Delaware Code, to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order that the COVID-19 State of Emergency declaration, as modified by the First through

Twenty-Seventh Modifications (which also includes the First through Tenth Revisions to the 27th Modification) and extended on April 10, 2020, May 8, 2020, June 6, 2020, July 6, 2020, August 5, 2020, September 3, 2020, October 2, 2020, October 30, 2020, November 25, 2020, December 24, 2020, January 25, 2021, February 19, 2021, March 19, 2021, and April 16, 2021 are hereby stricken in their entirety and substituted with the following provisions, which shall become effective May 21, 2021 at 8:00 a.m. E.D.T.:

A. POWERS OF DELAWARE EMERGENCY MANAGEMENT AGENCY (DEMA) AND DELAWARE DIVISION OF PUBLIC HEALTH (DPH).

1. All departments and agencies of the State of Delaware shall assist in response and recovery activities, as directed by and in coordination with the Delaware Emergency Management Agency (“DEMA”), in consultation with the Secretary of the Department of Safety and Homeland Security (“DSHS”), necessary in those areas affected by COVID-19. Further, DEMA is authorized to enact the Delaware Emergency Operations Plan.
2. DEMA and Delaware Division of Public Health (“DPH”) are authorized to cancel gatherings should it be deemed necessary for public health reasons.
3. The Delaware National Guard shall take precautionary or responsive actions directed by the Director of DEMA, in consultation with the Secretary of DSHS, upon request by local authorities.
4. Nothing in this Order prevents DEMA from issuing, requesting, and enforcing isolation and quarantine orders pursuant to 20 Del. C. § 3136 or DPH from issuing and enforcing isolation and quarantine orders pursuant to 16 Del. C. § 505.
5. The Public Health Authority is hereby authorized to conduct inspections, as it deems necessary, of any business operating during the COVID-19 State of Emergency to

determine if the business is in compliance with the COVID-19 State of Emergency declaration, plans approved pursuant to this or prior Modifications, and Delaware law, in an effort to prevent, reduce the spread of, and suppress COVID-19. The Public Health Authority is further authorized to enforce the requirements found in the COVID-19 State of Emergency declaration, individual plans approved by government authorities, or other applicable State of Delaware guidance. The Secretary of the Department of Health and Social Services (“DHSS”) shall issue an order further defining the enforcement of this Order. Any state agencies with primary regulatory authority over such entities and the Secretary of the Department of Safety and Homeland Security shall provide resources as requested to assist in the enforcement of this Order.

6. The Public Health Authority is authorized to make, amend and rescind orders, rules and regulations under Title 16 necessary for emergency management purposes.
7. The Public Health Authority is authorized to:
 - i. Suspend all state-required deadlines and timetables for performance of facility and agency licensure activities as the Public Health Authority deems necessary; and
 - ii. Suspend any regulatory requirement found in Title 16 of the Delaware Administrative Code that the Public Health Authority deems an impediment to staffing facilities and agencies during the pendency of the emergency; and
 - iii. Suspend any regulatory requirements related to the provision of in-home medical care and personal services under Title 16 of the Delaware Administrative Code as the Public Health Authority deems necessary.

B. CONSUMER PROTECTION.

1. **EVICTIONS.** Until the State of Emergency is terminated, and the public health emergency is rescinded, the provisions of the Delaware Code relating to residential evictions are hereby modified as follows: Actions for summary possession may be filed with respect to any residential unit located within the State, and shall be stayed to permit the Justice of the Peace Court to determine whether the parties would benefit from participating in court supervised mediation or alternative dispute resolution, which process may include appropriate housing support services, as determined by the Delaware State Housing Authority, if requested by either party or the Court. Sheriffs, constables, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction process during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential unit during the COVID-19 State of Emergency. Actions filed should include supporting documents, as directed by the court and supplied by the landlord, that demonstrate that the subject property is not covered by a federal moratorium on evictions.
2. **FORECLOSURES.** Until the State of Emergency is terminated, and the public health emergency is rescinded, the provisions of the Delaware Code relating to residential mortgage foreclosures, including Subchapter XI, Chapter 49 of Title 10, are hereby modified as follows:
 - i. For any residential mortgage foreclosure action commenced prior to the declaration of the State of Emergency due to COVID-19, any stay of a deadline in that action

pursuant to paragraphs C.2, C.3, and C.4 of the Sixth Modification is lifted, unless the court determines that a longer period is necessary in the interest of justice. Sheriffs, constables, and their agents shall refrain from acting to remove individuals from residential properties as a result of a mortgage foreclosure process by way of sheriff's sale, writ of possession, or action for ejectment during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice; provided, however, a party may act to remove individuals from residential properties, subject to a residential mortgage foreclosure action, where a judgment of foreclosure was issued prior to the declaration of the COVID State of Emergency. Any actions taken pursuant to this subsection should include supporting documents, as directed by the court and supplied by the lender, that demonstrate that the subject property is not covered by a federal moratorium on foreclosures.

- ii. Except as modified in this section, all other provisions of Chapter 49 of Title 10 of the Delaware Code remain in effect in accordance with their terms.
- iii. Except as provided above, no provision contained in this Order shall be construed as relieving any individual of the obligation to make mortgage payments or to comply with any other obligation that an individual may have under a residential mortgage.

3. **UTILITIES.** Beginning July 1, 2020, every public utility, not for profit utility, and municipal utility that operates water, wastewater, gas, or electric utility service in Delaware shall, at a minimum, extend a four (4) month payment plan (“COVID extended payment plan”) for past due accounts to customers that indicate they have been affected by the

impacts of COVID-19 which may include, but is not limited to, loss of employment. Such utilities shall not apply eligibility criteria, such as installment plan history, and customers may enroll in the COVID extended payment plan with no deposit/payment. Utilities may request proof of COVID impact, such proof to be the least minimal necessary to show the customer has been impact by COVID-19.

4. **PRICE GOUGING.** Effective February 4, 2021 at 9:00 a.m. E.D.T., no person doing business in this State shall engage in price gouging during the COVID-19 State of Emergency, which shall mean an excessive price increase of goods or services offered for sale by that person compared to the sales price offered by that person in the usual course of business immediately before the COVID-19 State of Emergency, unless that price increase is attributable to additional costs imposed on the seller of such goods or services, such price not to increase more than ten percent (10%) from the cost customarily applied in the usual course of business prior to the COVID-19 State of Emergency. If a person doing business in this State did not sell or offer to sell a good or service prior to the COVID-19 State of Emergency, the price at which that good or service was generally available in the State immediately prior to the COVID-19 State of Emergency will be used to determine if the person is engaged in price gouging. A violation of this paragraph shall be deemed an unlawful practice under § 2513 of Title 6 of the Delaware Code and a violation of Subchapter II of Chapter 25 of Title 6.

C. EDUCATION AND CHILD CARE.

1. **SCHOOL REOPENING.** Local Education Agencies (“LEAs”), private, and parochial schools may reopen or continue operations provided the requirements outlined in this Twenty-Eighth Modification are met.

2. **SCHOOL NOTIFICATION FOR COVID-19 POSITIVE CASES.** All LEAs, private, and parochial schools must notify parents/guardians, school personnel, and students aged eighteen (18) and up if the school becomes aware that a person who tested positive was in the school building at the same time as students. The manner and content of the notification is up to each school and must be consistent with applicable state and federal law. DPH will work with schools on their responses to reports of positive test results and on ensuring that any descriptions of those actions in their letters are accurate.

3. **FACE COVERINGS IN SCHOOLS FOR CHILDREN KINDERGARTEN TO 18 YEARS OF AGE.**

- i. Students in Kindergarten and above shall wear face coverings while inside child care homes and centers and at schools at all times except for meals, naps, or when doing so would inhibit the child's health. If outside at a child care home or center or at a school, face coverings shall be worn by students (Kindergarten and above) if social distancing cannot be maintained.
- ii. Any child under two (2) years of age must not wear a face covering because of the risk of suffocation. Children two (2) years of age through pre-Kindergarten are strongly encouraged to wear face coverings if they can do so reliably in compliance with Centers for Disease Control and Prevention ("CDC") guidance on How to Wear Cloth Face Coverings while inside child care homes and centers or elementary schools at all times, except for meals, naps, or when doing so would inhibit the child's health, and outside, if social distancing cannot be maintained.
- iii. Child care homes and centers and schools shall develop written procedures to respond to individual requests for reasonable accommodations or modifications to

their face covering policy to allow a child or student who cannot wear a face covering because of their health or a disability to participate in, or benefit from, the programs offered or services that are provided by the child care home or center or school.

- iv. Caregivers at child care homes and centers, and educators at schools, must supervise use of face coverings by children to avoid misuse and monitor compliance.

4. IN-PERSON EDUCATION

- i. In schools, desks must be arranged so they are facing the same direction. If tables are used, students must be seated a minimum of three (3) feet apart with face coverings. For child care homes and centers facilitating remote learning for school age children, or who offer kindergarten, the same social distancing requirements shall be met, taking into account that younger school age children should be engaged in age-appropriate activities in a safe way.
- ii. Health status and monitoring: Students and staff must stay home if they are exhibiting any symptoms of COVID-19 that are not associated with other known conditions (i.e. seasonal allergies), such as fever, cough, shortness of breath, new loss of taste or smell, sore throat, aches or muscle pain, chills or repeated shaking with chills, have been confirmed to have COVID-19, or have been required by DPH to isolate or quarantine. Students and staff that are two weeks past their final vaccination may follow CDC guidance for quarantine and isolation requirements.
- iii. Schools and child care homes and centers must identify an area or room separated from others where a student or staff member exhibiting symptoms of COVID-19

that are not associated with other known conditions (i.e. seasonal allergies), such as fever, cough, shortness of breath, new loss of taste or smell, sore throat, aches or muscle pain, chills or repeated shaking with chills, can wait until he/she can be picked up, which should be arranged as soon as possible, or transported to a medical facility if necessary.

5. STUDENT ATTENDANCE.

- i. The minimum annual school hours requirement of 14 Del. C. § 1049(a)(1), 14 Del. C. §§ 505(b) and 512, and 14 Del. Admin. Code 615 School Attendance shall be suspended for the 2020-21 academic year. LEAs (school districts and charter schools) will develop school schedules according to their model chosen for hybrid or remote learning. Each LEA must develop an attendance policy that defines and describes the LEA's rules concerning attendance for students K-12.
 1. LEAs shall provide on average three and a half (3.5) to five (5) hours daily of synchronous (delivered same time) or asynchronous (not delivered same time) programming. Attendance may be based on a combination of participation in, completion and/or submission of assignments as determined by the LEA.
 2. LEAs shall continue to enter attendance in eSchool.
 3. For the 2020-21 academic year, LEAs may amend their calendars without complying with the thirty- (30) day public notice requirement of 14 Del. C. § 1049(a)(1). For the 2020-21 academic year, LEAs may amend their calendars with a seven- (7) day public notice requirement. Any amended

plan must provide for the completion of one-hundred and eighty-eight (188) teacher days and be immediately provided to the DDOE.

4. Schools' schedules must allow for the delivery of Delaware State Content Standards for students K-12.
5. LEAs shall develop a process to provide outreach and support when families are not participating.
6. Each LEA shall post the attendance policy on its website and notify a parent, guardian, or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian, or relative caregiver upon request.

6. EDUCATOR SUPPORT.

- i. The definition of Capstone Clinical Residency found in 14 Del. Admin. Code § 290.1 shall be modified to allow programs to adjust the schedule and format of the Clinical Capstone Residency to comply with embedded LEA vacation schedules, holidays, and unforeseen official school closures until June 30, 2021.
- ii. The content-readiness exam or performance assessment requirements of 14 Del. C. § 1210(a) and 1210 (c); 14 Del. C. §§ 1262(c)(3) and 1262(c)(4); and 14 Del. C. § 1280(d) and 14 Del. Admin. Code §§ 290.3.4.1.1 and 290.3.4.1.2.1 shall be suspended until June 30, 2021.
- iii. The Candidate Evaluations required as part of the Educator Preparation Programs under 14 Del. Admin. Code § 290.3.5.1 may be completed through in-person, virtual and/or a combination of in-person and virtual observation until June 30, 2021.

- iv. The provisions of 14 Del. C. § 1262(c)(1)-(4) and 14 Del. Admin. Code §§ 290.1, 290.8.2.4, and 290.9.1.2 requiring an ARTC program participant to complete the ARTC program, attain two satisfactory summative evaluations, pass a content readiness exam and an approved performance assessment within the first two years of teaching shall be suspended for the 2019-20 academic year, such that the 2019-2020 academic year shall not count as one of the first two years of teaching and shall remain suspended until June 30, 2021.
7. **EDUCATOR LICENSING.** Educators holding a continuing license with a renewal date in 2020 who have not completed the ninety- (90) hour minimum professional development requirement of 14 Del. C. § 1212 shall have until June 30, 2021 to complete the requirement with a request from the LEA.
8. **SEED AND INSPIRE.**
- i. The requirement of 14 Del. C. § 3404A, Delaware Student Excellence Equals Degree Act (SEED), that a student receiving SEED financial assistance earn a minimum of twenty-four (24) credit hours in each academic year shall be suspended for the 2021-22 academic year.
 - ii. The requirement of 14 Del. C. § 3414A Delaware State Inspire Scholarship Program (Inspire), that a student receiving Inspire financial assistance earn a minimum of twenty-four (24) credit hours and complete ten (10) hours of community service in each academic year shall be suspended for the 2021-22 academic year.
9. **SUBSTITUTE TEACHERS.** The forty-five- (45) day work requirement for continuous employment found in 14 Del. Admin. Code § 745 and impacting substitute teachers and

persons who have participated in a student teaching placement and who have fulfilled the requirements of 14 DE Admin. Code § 746 shall be suspended for the 2020-21 academic year, thus Criminal Background Checks for substitute teachers set to expire pursuant to 14 Del. Admin. Code § 745.5 shall be valid for the 2020-21 academic year.

10. STUDENT SUPPORT.

- i. The vision and hearing screening, postural and gait screening, and lead screening requirements of 14 Del Admin. C. § 815.3 Health Examinations and Screenings shall be suspended for the 2020-21 academic year. For the 2021-22 academic year, schools instituting in-person or hybrid learning models of instruction must comply with 14 Del Admin. C. § 815.3. Any school instituting a remote learning model should make every effort to reinstate and complete screenings for § 3.1.1 (vision and hearing screening for grades 2, 4, 7, and 9 or 10), § 3.1.1.1.1 (driver's education students), and § 3.2.1 (postural and gait screening for grades 5-9) during the 2021-22 school year.
- ii. Lead screening for children entering kindergarten or first grade shall be required before the 2021-2022 school year in accordance with, 14 Del Admin. C. § 815.3.3.1.

11. EDUCATIONAL PROGRAMS FOR ENGLISH LEARNERS. The initial English Learner screening requirement of 14 Del. Admin. Code § 920.2.2 shall be suspended for the 2020-21 academic year. For the 2020-21 academic year, any student for whom a language other than English is reported on the home language survey, the school or district shall to the extent practicable follow Delaware's statewide entrance criteria as outlined in Delaware's approved ESSA Plan and further described in Delaware's English Learner

Guidebook. An initial in-person screening or WIDA Remote Screening assessment of English language proficiency shall be conducted as soon as practicable, but not later than forty-five (45) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument. Upon return to in-person instruction, any student screened with the WIDA Remote Screening assessment of English language proficiency must complete the in-person screening within twenty-five (25) days as outlined in Delaware's approved ESSA plan.

12. The requirements of 14 Del. C. § 1305(e)(1-3) mandating that 10-month employees work for a total of 188 full work days, including 180 days or equivalent hours devoted to actual school sessions for pupils, two days devoted to start-up/closing, and six days devoted solely to professional development, shall be suspended so long as all public and charter school educators continue to offer remote learning through the date indicated on their respective remote learning plans.

13. **TRANSCRIPTS.** Any regulation, policy, or statute mandating that an applicant, educator, or employee submit official school transcripts for any purpose, including a salary increment, license or certificate application, or job application shall be suspended until 90 days after the State of Emergency is lifted.

14. **TRANSPORTATION.**

- i. The requirement that districts conduct four hours of in-service training for school bus drivers and aides no later than June 30, 2021 pursuant to 14 Admin. Code § 1150.7.5 shall be suspended. For the 2020-21 academic year, in-service training may include remote training of school bus drivers and aides. The district must share

with DDOE the material provided and certify that each individual has completed the distance learning material to receive funding.

- ii. The contract allowance provisions of 14 Del. Admin. Code § 1150.17.6 mandating school bus contractor and Local Education District payments for Emergency Days shall be suspended.
- iii. Notwithstanding other provisions contained within this Twenty-Eighth Modification to the contrary, beginning with summer programming, schools shall refer to CDC guidance on school buses when transporting students.

15. GENERAL GUIDELINES.

- i. During the State of Emergency, the Secretary of DDOE is authorized to modify health and safety guidelines, as necessary, in consultation with DPH, to ensure all licensed child care homes and centers (collectively “child care”) and schools are adhering to health and safety measures necessary to prevent the spread of COVID-19.
- ii. The Secretaries of DHSS and DDOE, and the Director of the Office of Management and Budget (“OMB”) shall evaluate Delaware’s Purchase of Care Childcare Subsidy Program payments (POC) and tiered reimbursement payments for child care during the State of Emergency and may establish options for the adjustment of POC payments, if necessary.

D. ELECTIONS.

- 1. All elections for school board members in any Delaware school district scheduled to be conducted on May 12, 2020 pursuant to 14 Del. C. § 1072(c) are hereby further rescheduled for July 21, 2020. The terms of current school board members currently ending on June 30,

2020 are hereby extended to and through July 31, 2020. The term of any board member elected in the July 21, 2020 election shall commence on August 1, 2020, and the end of such term shall be governed by 14 Del. C. § 1052(d) and shall not be affected by this Modification. Districts are required to implement social distancing requirements, require all persons aged Kindergarten and older to wear a face covering at all times while indoors.

2. Municipal elections scheduled to be conducted pursuant to a municipality's charter or municipal code after the date of this Order but prior to the rescission of the State of Emergency may be conducted at the discretion of the municipality. Municipalities conducting such elections are required to implement social distancing requirements, and to enforce the requirement that all persons aged Kindergarten and older wear a face covering at all times while indoors. Municipalities are also encouraged to mail absentee ballot applications to all eligible voters in the municipality and to reduce the number of physical polling places on election day. Municipalities may also consider extending voting hours to reduce crowd size at the polling places.
3. Effective February 4, 2021 at 9:00 a.m. E.D.T., and until this provision is rescinded, for purposes of qualification of an otherwise duly registered voter to vote in a 2021 municipal election by absentee ballot pursuant to 15 Del. C. § 7571, and for purposes of qualification of an otherwise duly qualified voter to vote in a 2021 school district election (school boards or referenda) pursuant to 14 Del. C. § 1086 and 15 Del. C. § 5502, the qualification of "sick or physically disabled" as used in 15 Del. C. §§ 5502(4) and 7571(4) shall apply to and include any such voter who is asymptomatic of COVID-19 infection and/or wishes to self-quarantine or exercise social distancing to avoid potential exposure to (and community

spread of) COVID-19, and who herself or himself freely chooses to use such qualification to vote by absentee ballot.

E. FACE COVERINGS.

1. Definitions. For purposes of this Twenty-Eighth Modification to the COVID-19 State of Emergency declaration, the following terms shall have the meaning described herein:

- i. “Face covering” means a cloth, paper, or disposable face covering that fully covers the nose and the mouth. The face covering should be comfortable, so that the wearer can breathe comfortably through the nose and does not have to adjust it frequently, so as to avoid touching the face. Face coverings with valves should be avoided, per CDC guidance. A “medical-grade mask” means an N95, KN95, surgical, or other mask that would be appropriate for a health care setting. Wearing a medical-grade mask satisfies any requirement in this Order to wear a face covering, but all Delawareans are urged to reserve medical-grade masks for use by health care workers and first responders.
- ii. “Business or space open to the public” means any spaces, whether publicly owned or privately owned, where the public has access by right or invitation, express or implied, whether by payment of money or not, or that is open to employees, contractors, or volunteers. In addition to the public areas of businesses, such spaces may include, but are not limited to, building lobbies or common spaces, elevators, hallways, bathrooms, and buildings or meeting rooms where people gather for business, social, civic, cultural or religious purposes, or while traveling by taxi, bus, train, car service, ride-sharing or similar service.

2. Obligations for Face Coverings.

- i. While visiting any indoor business or space open to the public, individuals are required to wear a face covering and are required to comply with the following:
 1. Any child under the age of two (2) must not wear a face covering because of the risk of suffocation. While the use of face coverings for those between the age of two (2) and pre-Kindergarten is strongly encouraged if they can do so reliably in compliance with CDC guidance on How to Wear Cloth Face Coverings, this Order does not require that any child wear a face covering before they are in Kindergarten. Any child enrolled in Kindergarten and up to eighteen (18) years of age shall wear a face covering following the rules and requirements for adults contained in the COVID-19 State of Emergency and its modifications except when doing so would inhibit the individual's health. Parents and caregivers must supervise use of face coverings by children to avoid misuse.
 2. Face coverings are not required when seated at a table to eat or drink. Face coverings are required to be worn at all other times at indoor food and drink establishments, such as when walking to and from tables. Face coverings are recommended when not seated at outdoor establishments, and are required when in non-dining areas where people congregate (which includes dance floors and bar game areas).
 3. Face coverings are not required indoors when engaged in any activity that makes wearing a face covering or face shield not feasible, such as

swimming, dental appointments, or personal care services where the face must be exposed.

4. When individuals are speaking, reading, or singing to an audience, including through a camera in a location where any other person shares the space, face coverings or face shields must be worn or one of the following precautions must be taken: 1) the speaker, reader, or singer shall face away from the audience, maintain at least six (6) feet of distance between themselves and the audience and any other person in the space; or 2) stand behind a physical barrier or partition, such as a sneeze guard. The speaker, reader, or singer must put the face covering back on immediately after speaking, reading, or singing.
5. A face covering is not required when a person is in a personal space (i.e. single office or cubicle, shared space with barriers or where social distancing while at workstations is possible and only accessible to employees) when others outside of that person's household are not present. A face covering is required in common spaces, such as elevators, hallways, bathrooms, and meeting rooms where another person or persons who are not members of the same household are present, irrespective of physical distance.
6. Face coverings are not required in an outdoor space open to the public unless otherwise specified.
7. Face coverings are required at all times while indoors at an exercise facility.

- ii. Individuals who have a medical condition that makes it hard to breathe or a disability that prevents the individual from wearing a face covering can request a reasonable accommodation from the business, school, or individuals responsible for indoor/outdoor spaces open to the public to enable full and equal access to services, transportation, and facilities open to the public. A requested accommodation that would endanger any third party or create any likelihood of further infection is per se unreasonable and therefore not required. A reasonable accommodation does not include simply allowing a customer inside without a face covering. Reasonable accommodations could include curbside pickup, delivery, or pick up by appointment.
- iii. Businesses and individuals responsible for indoor spaces open to the public shall require employees, contractors, and volunteers to wear a face covering in compliance with this Modification, except as follows:
 - 1. Face coverings are not required when at or in a location where the employee, contractor or volunteer is alone and does not have a job that requires interacting with others.
 - 2. Face coverings are not required when seated at a table to eat or drink. Face coverings are required to be worn at all other times inside food and drink establishments, such as when walking to and from tables. Face coverings are recommended when at outdoor establishments when not seated, but are required when in non-dining areas where people congregate (which includes dance floors and bar game areas).

iv. Businesses and individuals responsible for indoor and outdoor spaces open to the public are required to:

1. Require customers and visitors to any indoor businesses or spaces open to the public to wear face coverings.
2. Provide face coverings for employees, contractors, and volunteers.
3. Provide accommodations for employees, contractors, customers and visitors if such accommodations are required by state or federal disabilities, labor, or public accommodations laws, including the Americans with Disabilities Act (ADA).
4. Have written documentation, such as a doctor's note, supporting accommodations for any employee, contractor, or volunteer not wearing a face covering. This includes having written documentation for any employees wearing a face shield in place of, but not in addition to, a face covering.
5. Remind customers or visitors to wear face coverings by (a) posting the requirement at the entrance of the business, and (b) posting clearly visible signs inside the business to remind customers or visitors of the requirement to wear the face covering at all times when in the business.
6. Post signage outlining alternatives to entering the business or indoor space open to the public without a face covering (i.e. curbside pickup, in-person appointment or appointment by video or phone). Signage must include contact information for customers in need of alternative accommodation.

- v. Businesses and individuals responsible for indoor and outdoor spaces open to the public are encouraged to:
 - 1. Provide, at no cost, disposable face coverings for customers and visitors who do not have one.
 - 2. Post required face covering signs in languages that are commonly spoken by customers and visitors.
 - 3. Educate employees on how to safely work and communicate with people who cannot wear face coverings.

- vi. If any individual who is not an employee, contractor or volunteer declines to wear a face covering at a business or indoor space open to the public due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition. The business or indoor space operator may need to work with that individual to seek a reasonable accommodation. If the business or indoor space operator is providing medication, medical supplies, food, or other essential product or service, it must, when possible, provide a reasonable accommodation to access services, such as curbside pick-up, delivery, or an appointment by phone or video. A requested accommodation that would endanger any third party or create any likelihood of further infection is per se unreasonable and therefore not required. A reasonable accommodation does not include simply allowing a customer inside without a face covering. Examples of reasonable accommodations include delivery, curbside pickup or visit by appointment.

F. FOIA — PUBLIC RECORDS AND PUBLIC MEETINGS. All public meetings of public bodies governed by 29 Del. C. §§10001 et seq. (including boards, commissions, task forces, and any other similar public body) may be conducted in person in public buildings, provided that three (3) foot radius around individuals is maintained and attendees wear face coverings. Public bodies are encouraged to conduct meetings electronically, either by means of telephone conference call or video conference call. Any in-person meeting must also provide a telephone or video conference option for any member of the public body or the public who does not wish to attend in person.

G. LONG TERM CARE AND OLDER ADULTS.

1. Facilities serving older adults, including skilled nursing facilities, assisted living facilities, hospice providers, and rehabilitation facilities with older patients must:
 - i. Screen and restrict access by those who meet the following: 1) signs or symptoms of a respiratory infection such as cough, fever, shortness of breath or sore throat; 2) in the last fourteen (14) days had close contact with someone with a confirmed diagnosis of COVID-19 regardless of the visitor's vaccination status, or 3) are ill with respiratory illness.
 - ii. Facility staff who have traveled should follow CDC travel recommendations and requirements, including restriction from work, when recommended for any traveler.
 - iii. All individuals permitted to enter the facility must wash hands upon entry; if soap and water are not available, alcohol-based sanitizer may be used.
 - iv. Make online methods of face-to face communication and phone calls available.
 - v. Staff must be monitored if they have been in contact with someone who is under investigation for COVID-19.

- vi. Staff must be monitored if they are showing any signs of respiratory infection such as fever, cough or sore throat.
- vii. Require any staff who has these signs or symptoms to not report to work. Any staff that develop these signs or symptoms on the job must immediately stop working, put on a face covering, and self-isolate at home.
- viii. Require staff who develop these signs and symptoms to inform the infection preventionist and contact their primary care doctor, as well as DPH at 1-866-408-1899 for next steps.
- ix. Nursing homes must ensure availability of alcohol-based hand sanitizers, tissues, no-touch receptacles for disposal, and face coverings at entrances, waiting rooms, and resident check-ins.
- x. Display signage for vigilant infection prevention.
- xi. Properly clean, disinfect, and limit sharing of medical equipment between residents and areas of the facility.

H. PUBLIC HEALTH.

1. State buildings and essential businesses that the Public Health Authority deems high-risk shall screen every employee, visitor, and member of the public upon entering or have posted reminders and information for self-check upon entering. The Public Health Authority shall develop and publicly post the screening tool to be used by high-risk essential businesses.
2. All state buildings and essential businesses shall display signage developed by the Public Health Authority that cautions individuals experiencing symptoms of COVID-19 not to

enter the premises. This requirement shall not apply to hospitals that are subject to the requirements of EMTALA.

3. All hospitals, nursing and residential facilities, ambulatory health care services, home health agencies, and personal assistance service agencies in Delaware, as categorized by the Division of Small Business, shall comply with the Public Health Authority's guidance for the optimal use of Personal Protective Equipment.
4. The requirement that long term care facilities provide documentation to the Division of Health Care Quality as to the amount of direct care time that was provided in an emergency by a Director of Nursing, Assistant Director of Nursing, or registered nurse assessment coordinator as required in 16 Del. C. § 1161(e) is hereby suspended.
5. Long term care facilities must continue to provide 3.28 hours of direct care per resident per day. However, the staffing ratios required in 16 Del. C. § 1162 are hereby suspended.
6. The training requirements found in Section 3215 of Title 16 of the Delaware Administrative Code are hereby suspended. Previously untrained feeding assistants may undergo on-site training for the pendency of the state of emergency.
7. All COVID-19 testing shall be made available to those persons who meet criteria for such testing as established and modified from time to time by DPH. All health care providers, facilities and entities that decide to offer testing shall make that testing available to people meeting testing criteria without regard to that person's ability to pay, type of health insurance, or participation in any particular provider network.
8. All health care providers who test for COVID-19 shall comply with the Public Health Authority's guidance for the use of such tests. Further, all such providers must provide each patient tested with educational materials developed by the Public Health Authority.

9. The Public Health Authority is hereby authorized to issue orders, as it deems necessary, to monitor, treat, prevent, reduce the spread of, and suppress COVID-19 in and around all facilities and agencies licensed by the Division of Health Care Quality under Title 16.
10. Nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities licensed under Title 16, Chapter 11 shall immediately ensure that they are in full compliance with Public Health Authority guidance related to COVID-19. Such facilities shall check DPH guidance daily to ensure that the facilities are complying with the most current guidance and shall adjust their policies, procedures, and protocols accordingly.
11. All nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities shall immediately implement, to the best of their ability, the following personnel practices:
 - i. Establish a cohort of staff who are assigned to care for residents with known or suspected COVID-19.
 - ii. Designate a room, unit, or floor of the facility as a separate observation area where newly admitted and readmitted residents not known to be infected with COVID-19 are kept for 14 days on appropriate infection precautions per guidance from the Public Health Authority while being observed every shift for signs and symptoms of COVID-19. As of April 1, 2021, quarantine is no longer recommended for residents who are being admitted or readmitted to a facility if they are fully vaccinated and have not had prolonged close contact with someone with SARS-CoV-2 infection in the prior 14 days. Fully vaccinated means a person is ≥ 2 weeks

following receipt of the second dose in a 2-dose series, or ≥ 2 weeks following receipt of one dose of a single-dose vaccine.

- iii. Designate a room, unit, or floor of the facility to care for residents with known or suspected COVID-19.

12. Any individual who has at any time held an active license to practice medicine in any United States jurisdiction, which is now inactive, expired or lapsed, may be activated to provide healthcare services on a volunteer basis in Delaware, if (1) the individual's license was active and in good standing for the duration of the five-year period prior to the date it went inactive, expired or lapsed, (2) the individual's scope of practice will be limited to primary care services, and (3) the hospital that will use the individual's services has provided training appropriate for the tasks to be performed.

13. Any individual who has at any time held an active license or certification from any United States jurisdiction to practice as a pharmacist, respiratory therapist, physician assistant, paramedic, emergency medical technician, practical nurse, professional nurse, registered nurse, advanced practice registered nurse, or certified nursing assistant, which is now inactive, expired or lapsed, may be activated to provide healthcare services on a volunteer basis in Delaware if (1) the individual's license or certification was active and in good standing for the duration of the five-year period prior to the date it went inactive, expired or lapsed, (2) the individual's scope of practice is limited to examination, testing and treatment, and (3) the hospital that will use the individual's services has provided training appropriate for the tasks to be performed.

14. The training provided in accordance with subsections 12. and 13. above shall be at no cost to the State of Delaware.

15. An individual must be registered with the Medical Reserve Corps before they may be activated to provide healthcare services as a volunteer.
16. Activation to provide healthcare services as a volunteer shall occur when a hospital activates its crisis standard of care developed in accordance with the Crisis Standard of Care Concept of Operations approved by the Public Health Authority. The Public Health Authority must grant written approval for the health system to operationalize its crisis standard of care before paragraphs 12-15 of this Public Health Section goes into effect.
17. Individuals activated to provide healthcare services as a volunteer shall be considered “qualified medical personnel” for purposes of 20 Del. C. § 3129.
18. During the pendency of the State of Emergency declaration, 31 Del. C. 1101(b) shall not apply to medical assistance recipients’ contact information exchanged between the Division of Medicaid and Medical Assistance and the Public Health Authority.
19. The requirement that all payments for dental care treatments are subject to a \$3 copay for adult recipients as required in 31 Del. C. § 503(b)(2)(c) is hereby suspended. The Dental providers who treat adult Medicaid recipients shall not have their payments reduced by \$3, but shall be paid the full allowable amount by the Division of Medicaid and Medical Assistance.
20. The requirements in Chapter 93 of Title 16 are hereby suspended for acute care hospitals that seek to increase their bed capacity in order to treat COVID-19 patients, so long as any such hospital obtains approval from the Division of Public Health. Hospitals that wish to increase their bed capacity to treat COVID-19 patients must submit a plan to **OEMS@delaware.gov**. Plans must include a justification for increased beds, and assurances for adequate staffing, maintenance, and safety. Plans may not be implemented

until approved by the Division of Public Health. Hospitals that increase bed numbers pursuant to this section must eliminate beds and return to the previously approved number of licensed beds, or seek a Certificate of Public Review, if so ordered by the Division of Public Health or upon the termination of the State of Emergency.

I. STATE GOVERNMENT.

1. **EMPLOYEES.** In addition to a delegation of authority to issue emergency rules and regulations consistent with the COVID-19 State of Emergency declaration and Delaware law, the Department of Human Resources (“DHR”) is hereby authorized to extend existing or establish new COVID-19 leave policies for employees, as needed, to respond to the COVID-19 State of Emergency until the termination of the State of Emergency or September 30, 2021, whichever occurs first.
2. **PROCUREMENT.** The Department of Health and Social Services (“DHSS”) and the Department of Safety and Homeland Security (“DSHS”) are exempted from 29 Del. C. Chap. 69 for purposes of purchasing materials necessary for responding to this public health emergency.
3. **STATE INTERNAL CONTROL PROCEDURES.**
 - i. The Division of Accounting (DOA) in the Delaware Department of Finance shall issue Internal Control Policy Guidance for COVID-19 to all State Organizations providing for any temporary modifications to State internal control procedures for the duration of the current State of Emergency.
 - ii. The provisions of Title 29, § 6103 related to frequency of banking deposits are temporarily waived, provided that State Organizations shall be required to provide an alternative plan for cash receipts deposits during the State of Emergency to the

Division of Accounting by email to DOA's mailbox at
Internal.Controls@delaware.gov.

4. **NATURAL RESOURCES.** The Delaware Secretary of the Department of Natural Resources and Environmental Control (“DNREC”) is authorized to develop emergency rules, amending the authority vested to the DNREC Secretary in Chapter 80 of Title 29 of the Delaware Code, and Title 7 of the Delaware Code, in response to COVID-19. These emergency rules should enhance the flexibility of the DNREC Secretary to respond to COVID-19 concerns that implicate the natural resources of the State of Delaware. The emergency powers granted herein may include the authority to issue an additional 1,000 one-year surf fishing vehicle tags for the 2021 season. DNREC shall create and implement a plan to issue the additional tags at its discretion. All surf fishing vehicle tags issued are not transferable and are subject to all applicable laws.
5. **EXECUTIVE BRANCH AGENCY REVIEW OF REGULATIONS.** The executive branch agency review of regulations requirement of 29 Del. C. §10407 is hereby suspended for 2020 and will commence as soon as practicable, but no later than ninety (90) days after the COVID-19 State of Emergency has ended.

J. REOPENING OBLIGATIONS OF INDIVIDUALS AND BUSINESSES.

1. **SOCIAL DISTANCING AND TRANSMISSION REDUCTION.** While in the State of Delaware, all individuals must promote social distancing and reduce transmission of COVID-19. For purposes of this Twenty-Eighth Modification, “Minimum Social Distancing Requirements” means: 1) maintaining at least three (3) feet social distancing from any individual who is not a member of the same household or a caregiver to someone in that household; 2) washing hands with soap and water for at least twenty (20) seconds

as frequently as possible or using hand sanitizer composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol; 3) covering coughs or sneezes with something other than one's hands (e.g., elbow, handkerchief); and 4) not shaking hands.

2. **SOCIAL GATHERINGS AND EVENTS.**

i. **Definitions.** For purposes of this Twenty-Eighth Modification to the COVID-19 State of Emergency declaration, the term "gathering" shall mean a planned or spontaneous event, indoors or outdoors, with a small number of people participating or a large number of people in attendance, such as a community event or gathering, concert, festival, conference, parade, wedding, or sporting event. In applying the definition of "gathering," DPH may, in its discretion, assess and weigh the following non-exclusive criteria:

1. Whether the event or activity is advertised to the public or offered by invitation.
2. Whether the event or activity occurs at a specific, date, time, and location.
3. Whether the event or activity has a specific beginning or ending time.
4. Whether the event or activity intends to draw people together for a common or particular purpose.
5. Whether the event or activity is designed to promote or ensure that performers, speakers, or attendees share a common experience, purpose, or goal.

ii. **GATHERINGS AND EVENTS.** All gatherings or events held within any business or space open to the public (including, but not limited to: food and drink establishments; commercial lodging; convention centers; pools; senior centers; and

those in parks and recreation facilities or at facilities without a stated fire code occupancy) shall comply with the gathering requirements set forth by this Twenty-Eighth Modification. Gatherings or events at any business or space open to the public of up to two-hundred and fifty (250) people (e.g. weddings and receptions, graduations, birthday parties, funeral receptions, etc.) are permitted under the following conditions:

1. Hosts of gatherings or events must take steps to protect vulnerable populations, including by providing materials and equipment necessary for proper hand hygiene, enforcing social distancing, and requiring the use of face coverings as required by this Modification.
2. Gatherings or events at private residences with less than two-hundred and fifty (250) people (e.g. dinner parties, house parties, birthday parties) people should follow CDC guidance for face coverings, unless otherwise directed by this Modification.
3. Any business or space open to the public interested in holding a gathering or event must have a mechanism for limiting attendance, enforcing social distancing between attendees and complying with this Modification's declarations relating to providing face coverings for employees and signage about the use of face coverings for guests.
4. Any food service, including by catering services and their staff, must operate within the parameters prescribed for Food and Drink Establishments in this Twenty-Eighth Modification to the State of Emergency

5. Individuals who are not part of the same household are expected to remain at least three (3) feet apart to the greatest extent possible and are encouraged to maintain greater physical distance whenever possible.
6. Individuals must stay home when experiencing COVID 19 symptoms, not related to another known condition (i.e. seasonal allergies).
7. Individuals should wash their hands or use hand sanitizer regularly during the gathering or event.
8. Hand sanitizing stations should be supplied at any entrance or exit and at various locations within the event. Hand sanitizer must be composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol.
9. Sharing microphones is discouraged. All microphones, whether they be self-standing in holders, handheld or lapel style should be sanitized after each use.
10. The gathering or event must comply with all other applicable state, county and local laws for gatherings and events.
11. Notwithstanding the gathering occupancy limits set forth in Paragraph J.2, facilities who wish to host indoor gatherings and events at any business or indoor space open to the public of over two-hundred and fifty (250) people may apply to host a large indoor gathering or event by submitting a plan to **HSPContact@delaware.gov** at least seven (7) days prior to the anticipated event. Plan approval is at the discretion of the Division of Public Health, which will consider how to prevent, reduce the spread of, and suppress

COVID-19 at any gathering or event permitted under this Modification. At a minimum, the plan must meet the following requirements:

- a. The plan must show a strict adherence to guidelines in Paragraph 2 of section J.
- b. The plan must consider information regarding the number of people attending who are at greater risk of more serious illness after contracting COVID-19. Older adults and persons with pre-existing health conditions are thought to be at increased risk.
- c. The plan must consider information regarding the density of attendees within a confined area. Based on what is currently known about the virus, spread from person-to-person happens most frequently among close contacts, meaning individuals who are within six (6) feet of each other for fifteen (15) minutes or more, per CDC definition of close contact.
- d. The plan must contain information regarding enforcement of social distancing.
- e. The Division of Public Health will develop a rubric for determining whether the outdoor gathering over 250 individuals will require masks. The rubric will be publicly available. Plans must include all information required by the Division of Public Health to determine if masks are to be required.
- f. The plan must follow all requirements for Food and Drink Establishments outlined in this Modification.

- g. The gathering or event must comply with all other applicable state, county and local laws for gatherings and events.

3. **RESPONSIBILITIES OF ALL BUSINESSES.** Business operations for any business that is re-opening or continuing operations shall follow the coronavirus guidelines for public safety enumerated by the CDC and DPH, including:

- i. All employees, patrons, and visitors must wear face coverings in accordance with this Twenty-Eighth Modification at all times.
- ii. Businesses must ensure social distancing throughout a business' location. Businesses that cannot operate at stated fire occupancy capacity while complying with social distancing requirements may submit a facility-specific plan to DPH at HSPcontact@delaware.gov that includes the use of barriers appropriate for business operations. Plans may not be implemented until approved by DPH.
- iii. Businesses must ensure social distancing of at least three (3) feet between waiting patrons and visitors in line inside. Signage and floor markings must be present to guide patrons and visitors in appropriately spacing while in line.
- iv. Businesses must post signs on how to stop the spread of COVID-19, hand hygiene, and how to properly wear a face covering, including:
 - 1. Do not enter if you have symptoms of COVID-19 or if you have been exposed to anyone who has tested positive with COVID-19 in the past fourteen (14) days;
 - 2. Individuals aged Kindergarten and up are required to wear a face covering indoors or outdoors as required by this Modification;

3. At all times, individuals who are not part of the same household are expected to remain at least three (3) feet apart to the greatest extent possible and are encouraged to maintain greater physical distance whenever possible; and
 4. Proper hand washing and frequent use of hand sanitizer is encouraged.
 5. Printable signs that will help you comply with the general and industry-specific signage requirements are available at
<https://business.delaware.gov/wp-content/uploads/sites/118/2020/05/DSB-COVID-19-Posters-For-Review.pdf>
- v. Businesses must make hand sanitizer or handwashing stations readily available for all employees, patrons, and visitors throughout the business' location, including at each entry and exit at a minimum. Hand sanitizer must be composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol.
 - vi. Follow all State and CDC guidelines and recommendations for social distancing, including that employees maintain three (3) feet of space between themselves and other employees, patrons, and visitors to the greatest extent possible.
 - vii. Businesses are strongly encouraged to modify any practices that cause close contact (meaning being within six (6) feet for fifteen (15) minutes or more over a 24-hour period) or sharing items among patrons or visitors, per CDC definition of close contact.

- viii. Implement flexible and non-punitive sick-leave policies to facilitate compliance with this Modification. Such policies should follow any guidance from the CDC and DPH regarding COVID-19.
 - ix. Exclude employees who (a) have been diagnosed with COVID-19, (b) are reasonably suspected to have COVID-19, or (c) have symptoms of COVID-19 that are not associated with other known conditions (i.e. seasonal allergies), such as fever, cough, shortness of breath, new loss of taste or smell, sore throat, aches or muscle pain, chills or repeated shaking with chills. Such employees shall stay home and not come to work until they are until they are free of fever (100.4 °F or greater using an oral thermometer), signs of a fever, and any other symptoms of COVID-19 for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g., cough suppressants). These employees should notify their supervisor and stay home if they are sick. Symptomatic employees must not physically return to work until cleared by a medical professional.
 - x. Vaccinated employees should follow CDC guidance for quarantine and isolation requirements.
 - xi. Prohibit employees who have been told they must be isolated or quarantined from on-premises work until isolation or quarantine status is discontinued by DPH.
 - xii. Separate sick employees from other individuals immediately.
4. **ADDITIONAL BUSINESS REQUIREMENTS.** The following business categories may continue operations or reopen subject to the following additional requirements:

i. **Food and Drink Establishments.**

1. Tables and booths must be arranged in a way that ensures customers at one table are at least three (3) feet apart from customers who are adjacent to or facing them unless barriers are present. If barriers are used:
 - a. Must be at least six (6) feet in height and start no more than two (2) feet from the floor.
 - b. Must be wide enough to provide coverage for people seated at the table.
 - c. Can be installed for this purpose, but walls, booths, etc., that meet the size requirements are acceptable.
2. Other than when eating or drinking, staff must wear a face covering at all times. Face coverings are not required for patrons when seated at a table to eat or drink. Face coverings are required to be worn at all other times at food and drink establishments, such as when walking to and from tables. Face coverings are recommended when not seated at outdoor establishments, but are required when in non-dining areas where people congregate (which includes dance floors and bar game areas).
3. Any common areas where people would typically stand or engage in other activities must be off limits if not otherwise occupied by tables with seated patrons, unless the Food and Drink Establishment can create a facility-specific plan for such activities. Plans should be emailed to **hspcontact@delaware.gov** for consideration. The use of dance floors,

arcade/bar game areas, pool tables, and similar spaces is not permitted until plans are approved by DPH.

- ii. **Personal Care Services.** If a customer must remove a face covering for a service to be performed (e.g. make-up application, facial, etc.) the professional providing services shall wear a face covering during the procedure until the client is able to wear their face covering or the procedure is complete, and three (3) feet of social distance can be maintained.
- iii. **Transportation.** Businesses that provide bus transportation (excluding school transportation) must submit requests to hspcontact@delaware.gov for a variance of social distancing requirements otherwise contained in this Twenty-Eighth Modification if three (3) feet social distancing between non-household members cannot be maintained. Variances may not be implemented until approved by the Division of Public Health.

K. YOUTH AND AMATEUR ADULT SPORTS.

1. APPLICATION AND ENFORCEMENT.

- i. **Application.** All youth and amateur adult sports facilities, organizations and leagues must review this document and follow all mandated terms for operation below. Every athletic facility and sport organization is responsible for enforcing these requirements.
- ii. **Enforcement.** Fines or closure may be imposed upon facilities and organizations that do not abide by these requirements. Failure to comply with plans submitted to, and approved by, DPH will result in rescission of plan approval and further enforcement.

2. **DEFINITIONS.** For the purposes of this Twenty-Eighth Modification to the COVID-19 State of Emergency declaration, “High risk” means activities that involve sustained or repeated close contact of athletes with one another. Examples include ice hockey, basketball, tackle football, boys’/men’s lacrosse, wrestling, boxing, rugby, competitive cheer, martial arts, ultimate frisbee, and pairs figure skating.

3. **SUBMISSION AND APPROVAL OF PLANS.**

i. Tournaments are not permitted until plans for the tournaments are approved by DPH. Tournament facilities shall submit plans to **HSPcontact@delaware.gov** for review. Plans must include a method to collect contact information for all players, staff, coaches, officials and spectators, as well as team rosters and game schedules to assist with contact tracing in the event of a COVID-19 infection.

ii. Facilities, leagues or organizers that will host indoor sports, including leagues and tournaments, must have a plan approved by DPH. Plans must address face coverings, social distancing, ventilation, and other applicable requirements. Plans must also include a method to collect contact information for all players, staff, coaches, officials and spectators, as well as team rosters and game schedules to assist with contact tracing in the event of a COVID-19 infection. Plans shall be submitted by facilities to **HSPContact@delaware.gov**.

4. **FACE COVERINGS.**

i. Athletes participating in high-risk sports and activities must wear a face covering at all times.

ii. All athletes, coaches, referees, officials, staff, and any spectators must wear face coverings at all times while indoors. This includes when addressing players or

officials on or off the field, when coaching during the game, and during practices, trainings and team meetings.

- iii. Traditional whistles must be replaced with a device that can be used for attention without removing the face covering.
- iv. Coaches, staff and referees who have a medical condition that makes it hard to breathe or a disability that prevents the individual from wearing a face covering can request a reasonable accommodation from their employer or the individual responsible for the athletic event.
- v. The Delaware Interscholastic Athletic Association's face covering requirements for student athletes pertaining to the interscholastic sports of baseball, golf, girls' lacrosse, girls' soccer, softball, tennis, and track and field set forth at subsections 5.6.1.1.1, 5.6.1.7.1, 5.6.1.9.1, 5.6.1.10.1, 5.6.1.11.1, 5.6.1.13.1, and 5.6.1.14.1 of 14 Del. Admin. C. § 1011 shall be suspended for the 2021 spring sports season.

5. SOCIAL DISTANCING.

- i. Players must be at least three (3) feet apart from one another at all times, unless they are members of the same household, except when actively engaged in practice or game play while on the field. The Delaware Interscholastic Athletic Association's social distancing requirements for student athletes set forth in subsection 4.5.3.4 of 14 Del. Admin. C. § 1011 shall be suspended. Student athletes participating in interscholastic sports must be at least three (3) feet apart from one another at all times, unless they are members of the same household, except when actively engaged in practice or game play while on the field.

- ii. Dugouts, benches and other limited or enclosed gathering spaces must not be used unless three (3) feet of distancing can be maintained.
- iii. Players and coaches must be at least three (3) feet apart from one another at all times unless they are from the same household. The Delaware Interscholastic Athletic Association's social distancing requirements for student athletes and coaches set forth in subsection 4.5.3.4 of 14 Del. Admin. C. § 1011 shall be suspended. Student athletes and coaches participating in interscholastic sports must be at least three (3) feet apart from one another at all times, unless they are from the same household.
- iv. Players must be provided adequate space for belongings, water bottles and equipment to ensure three (3) feet of distancing when accessing gear.
- v. The Delaware Interscholastic Athletic Association's social distancing requirements for officials set forth in subsection 4.5.3.11 of 14 Del. Admin. C. § 1011 shall be suspended. Officials must maintain three (3) feet of social distance at all times when communicating with others.

6. HAND WASHING, SANITIZING, CLEANING AND DISINFECTING.

- i. Players, staff, coaches, officials, and all participants in sports must wash hands or sanitize hands, per CDC and DPH guidelines, before and after practice and games. Washing or sanitizing during games and practices with shared equipment or facilities is strongly encouraged, especially when balls or equipment are touched by more than one person.
- ii. Hand sanitizer or hand washing stations must be readily available for all players, staff, coaches, officials, spectators, and all participants throughout the business

location, including at each entry and exit. Hand sanitizer must be composed of at least sixty percent (60%) ethanol or seventy percent (70%) isopropanol.

7. GENERAL REQUIREMENTS.

- i. All facilities, organizers, and leagues must identify a safety and hygiene manager who is responsible for coordinating and enforcing COVID-19 protocols. All coaches, staff, officials, and families should know who this person is and how to contact them. Any plans submitted to DPH must identify this individual.
- ii. Coaches, staff, officials, parents, and players must be informed and routinely reminded of team infection control measures and COVID-19 protocols – especially around face coverings and social distancing.
- iii. Coaches, staff, officials, parents, and players must be informed about the expectation to stay home when sick, to contact the team safety and hygiene manager if they test positive for COVID-19, and to inform DPH about possible exposures.
- iv. A health self-assessment must be completed by each athlete, coach, and staff prior to engaging in any athletic activity in a facility, organization, or league.
- v. Teams and leagues must have written arrival and departure procedures that, at a minimum address:
 1. A procedure for health assessment for all athletes, coaches, and staff; and
 2. A protocol to address a person who develops symptoms during activity.
- vi. Sports organizations and facilities must post extensive signage instructing staff, participants, and spectators about required face coverings and maintaining three (3) feet of distance from others. Printable signs that will help you comply with signage requirements are available at de.gov/playsafelysign.

vii. In addition to the recommendations applying to all cases of COVID spread and consistent with the authority provided by Delaware law and this State of Emergency, the Division of Public Health is authorized to issue cease and desist orders to any team with high or increasing levels of COVID-19 cases or for a failure to comply with any provision of the Declaration of a State of Emergency, including up to a ban on all future practices, games, matches, competitions or similar activities.

L. VACCINE ADMINISTRATION.

1. All COVID-19 vaccinations shall be made available only to persons who meet current criteria for inoculation as determined by DPH. The phases, criteria, or target population will be established and modified over time by DPH in the form of the State of Delaware's COVID-19 Vaccination Guidance ("Vaccination Guidance") and may be accessed at the following website: <https://coronavirus.delaware.gov/vaccine/>
2. All health care providers, facilities and entities that decide to offer vaccinations shall make those vaccinations available to any person meeting the vaccination criteria without regard to that person's ability to pay, type of health insurance, or participation in any particular provider network.
3. All health care providers, facilities and entities that offer vaccinations shall provide vaccinations at no out-of-pocket cost to individuals.
4. All healthcare providers, facilities, and entities administering COVID-19 vaccination in Delaware must report the vaccination within 24 hours to the Division of Public Health through the Delaware Immunization Information System (DeIVAX or its derivative). Healthcare providers, facilities, and entities administering COVID-19 vaccination in

Delaware must request and, when provided, report the vaccinated person's date of birth, address, phone number, race, ethnicity, disability, date of vaccination, lot number and manufacturer of the vaccine administered, and other information as specified in the Delaware Immunization Information System.

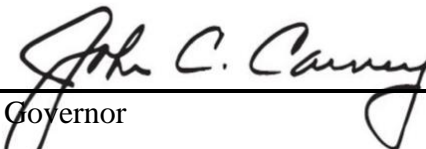
5. Notwithstanding any provision of the Delaware Code or the common law of the State of Delaware, all COVID-19 vaccine or the constituent parts of COVID-19 vaccine distributed to any third party by the State of Delaware shall remain the property of the State of Delaware until administered to a patient. Until the moment of vaccination, the State of Delaware shall retain the authority to direct, redirect, reclaim, recover, and reallocate any amount of COVID-19 vaccine or the constituent parts of COVID-19 vaccine without cause and at the sole discretion of either DHSS or DEMA.
6. Failure to comply with the data reporting requirements in this order may result in a fine as authorized by 16 Del. C. § 107(a) and/or the cessation of vaccine distribution to the noncompliant provider.

M. MISCELLANEOUS.

1. To the extent permitted by Delaware and local law, local governments may impose greater restrictions or prohibitions on the activities of people and businesses than those imposed under this Twenty-Eighth Modification to the State of Emergency. Most of the restrictions in this Twenty-Eighth Modification are minimum requirements. Because the impact of COVID-19 has been and will likely continue to be different in different parts of Delaware, counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations that impose such additional restrictions or prohibitions.

2. This Order has the force and effect of law. Any failure to comply with the provisions contained in a Declaration of a State of Emergency or any modification to a Declaration of the State of Emergency may constitute a criminal offense. 20 Del. C. §§ 3115 (b); 3116 (9); 3122; 3125. State and local law enforcement agencies are authorized to enforce the provisions of any Declaration of a State of Emergency.
3. Concealed Carry Permits: Any person licensed to carry a concealed deadly weapon under 11 Del. C. § 1441, whose license expires on June 1, 2021, is granted an extension of their license until August 1, 2021 if, prior to the expiration of their existing license, the licensee submits to the Superior Court a renewal application in compliance with 11 Del. C. § 1441 and the Delaware Superior Court Procedural Rules for Application and Administration of 11 Del. C. § 1441. All other provisions of 11 Del. C. § 1441 remain in full force and effect.
4. This Order and any emergency rules or regulations effected therefrom remain effective until the termination of the State of Emergency, except as may be rescinded, superseded, amended, or revised by additional orders.

APPROVED this 12th day of May 2021 at 2:00 p.m.


Governor