



EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del. C. §§ 122 & 128 and 29 Del. C. § 10119

16 Del. Admin. C. § 4202: Control of Communicable and Other Disease Conditions

AUTHORITY

Pursuant to 16 Del.C. §§ 122(3)(a) & 128 and 29 Del.C. § 10119, the Department of Health and Social Services (“Department”) is adopting emergency regulatory amendments to 16 Del. Admin. C. § 4202: *Control of Communicable and Other Disease Conditions*. Additionally, 29 Del.C. § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. § 10115. Moreover, 16 Del.C. § 122(3)(a) authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 Del.C. § 128 authorizes the Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware’s tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Secretary's Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Secretary's Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*, specifically, Section 7.7 which requires certain facilities to require masks, and Section 12 which adds a severability clause, are temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

7.7 COVID-19 Mitigation and Prevention

7.7.1 Schools

7.7.1.1. All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

12.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* § 10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to Alanna.Mozeik@Delaware.gov.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to 16 *Del.C.* §§122(3) & 128, and 29 *Del.C.* § 10119, as referenced above, and supported by the evidence contained herein.



Molly K. Magarik, MS
Secretary