



## **EMERGENCY SECRETARY'S ORDER**

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

(Extension of Emergency Order)

**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 renewing emergency regulatory amendments to 16 **DE Admin. Code** 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. Emergency regulations to require this mask usage in schools were published in the September 2021 *Register* at 25 **DE Reg.** 248 (09/01/21).

### **EFFECTIVE DATE OF ORDER**

Accordingly, it is hereby ordered, that 16 **DE Admin. Code** 4202 Control of Communicable and Other Disease Conditions, specifically, subsection 7.7 which requires certain facilities to require masks, and Section 12.0 which adds a severability clause, are temporarily modified by making insertions as shown by underline as follows:

#### 7.7 COVID-19 Mitigation and Prevention

**"TO IMPROVE THE QUALITY OF LIFE FOR DELAWARE'S CITIZENS BY PROMOTING HEALTH AND WELL-BEING,  
FOSTERING SELF-SUFFICIENCY, AND PROTECTING VULNERABLE POPULATIONS."**

### 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 took effect on August 16, 2021 and was effective for 120 days. This renewal shall take effect on December 14, 2021 and shall remain in effect for 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 [DHSS\\_DPH\\_regulations@Delaware.gov](mailto:DHSS_DPH_regulations@Delaware.gov).

### **ORDER**

It is hereby ordered, this 6th day of December, 2021, that the above referenced amendment to 16 **DE Admin. Code** 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