

State of Delaware



Executive Department
Dover

FIRST REVISION TO THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) has determined that the novel coronavirus (“COVID-19”) presents a serious public health threat, and the CDC is expecting a surge of COVID-19 cases in the coming days to weeks being caused by new and highly transmissible variants of the coronavirus such as Delta and Omicron which spread more easily than the original virus; and

WHEREAS, on January 3, 2022 at 11:30 a.m. E.S.T., I issued a State of Emergency for the State of Delaware due to a Public Health Threat, a complete copy of which is incorporated herein by reference and available at <https://de.gov/covidorders>; and

WHEREAS, in January 2022, Delaware has repeatedly surpassed its daily record number of COVID-19 cases since March 2020, despite administering over one and a half million doses of COVID-19 vaccines to individuals who live, work, and are educated in Delaware; and

WHEREAS, in January 2022, Delaware has experienced an extraordinary surge in recent hospitalizations, with some hospitals over 100% inpatient bed capacity amid crippling staffing shortages; and

WHEREAS, the CDC expects that anyone with an Omicron infection can spread the virus to others, even if they are vaccinated or asymptomatic; and

WHEREAS, the CDC continues to recommend wearing a mask in public indoor settings in areas of substantial or high community transmission, regardless of vaccination status; and

WHEREAS, despite administering over one and a half million doses of COVID-19 vaccines to individuals who live, work, and are educated in Delaware, Delaware has experienced an extraordinary surge in recent hospitalizations with some hospitals over 100% inpatient bed capacity amid crippling staffing shortages; and

WHEREAS, there is a need to create greater flexibility for our healthcare system to respond to another COVID-19 surge; and

WHEREAS, it is critical that individuals and businesses in Delaware continue to follow vaccine, booster, social distancing, masking, and other infection control protocols as recommended by the CDC; and

WHEREAS, there is a shortage of substitute teachers in school districts throughout the State, which is being exacerbated by the increased transmissibility of the Omicron variant; 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.

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 following provisions shall become effective January 11, 2022 at 12:00 p.m. E.S.T., by making deletions as shown by strike through and insertions as shown by italics as follows:

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

1. The Public Health Authority is authorized to make, amend, and rescind orders, rules and regulations under Title 16 necessary for emergency management purposes.
2. 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.
3. 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.

4. 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.
5. 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.
6. The following requirements are waived or modified for members of the Delaware National Guard who complete a Certified Nursing Assistant course after January 1, 2022:
 - i. The requirement in 16 Del. C. §3002A that Certified Nursing Assistant trainees must complete a total of 150 clock hours of training. However, such individuals who wish to become certified must complete 75 classroom hours and 16 clinical hours before sitting for a certification exam.
 - ii. The requirement in 16 Del. C. §3004A that Certified Nursing Assistant trainees must complete a mandatory orientation period is hereby waived.
 - iii. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of their criminal history report obtained after January 1, 2022. However, no

member of the Delaware National Guard may work as a Certified Nursing Assistant in a long-term care facility if they have a conviction deemed disqualifying by the Department of Health and Social Services.

- iv. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of a drug screening obtained after January 1, 2022 that meets the requirements established by the Department of Health and Social Services.

B. MISCELLANEOUS

- ~~1. 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.~~

C. COVID-19 MITIGATION AND MASKING

1. *Definitions. For purposes of this Declaration of a State of Emergency, the following terms shall have the meaning described herein:*
 - i. *“Mask” shall mean a type of mask or respirator recommended by CDC guidance available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.*
 - 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 while traveling by taxi, bus, train, car service, ride-sharing or similar service.

2. Obligations for Individuals to Wear Masks.

i. All individuals aged Kindergarten and up must wear a mask, regardless of vaccination status, while in the following places:

- 1. when they are an employee or rider on public transportation, or a school bus, paratransit vehicle, taxi, private car service, or ride-sharing vehicle;*
- 2. when they are an employee or visitor at any indoor business or space open to the public; or*
- 3. when wearing a mask is otherwise required by law or regulation.*

ii. Notwithstanding the masking requirements in Paragraph B.2.i., the following exceptions shall apply:

- 1. Any child under the age of two (2) must not wear a mask because of the risk of suffocation. Children two (2) years of age through pre-Kindergarten are strongly encouraged to wear masks if they can do so reliably in compliance with CDC guidance on Your Guide to Masks, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>. Parents and caregivers must supervise use of masks by children to avoid misuse.*
- 2. Masks are not required when actively eating or drinking in food and drink establishments. Masks are required at all other times in food and drink establishments, such as when walking to and from tables.*

Customers are strongly encouraged to wear masks when waitstaff are at the table. Masks are required on the casino floor at all times when not actively eating or drinking.

- 3. Masks are not required when engaged in any activity that makes wearing a mask not feasible, such as swimming, dental appointments or personal care services where the face must be exposed.*
- 4. Masks are not required when a speaker, reader, or singer can maintain at least six (6) feet of distance between themselves and the audience and any other person in the space. The speaker, reader, or singer must put the mask back on immediately after speaking, reading, or singing.*
- 5. Masks are not required in houses of worship or places of religious expression. Individuals in houses of worship or places of religious expression are strongly encouraged to wear masks and maintain at least six (6) feet of distance between themselves and others outside of that person's household whenever possible.*
- 6. Masks are not required when a person is in a personal office (a single room) when others outside of that person's household are not present. Masks are not required in an open plan or cubicle setting when a person is seated and can maintain at least six (6) feet of distance between themselves and others outside of that person's household. Individuals working in an open plan or cubicle setting are strongly encouraged to maintain greater physical distance whenever possible and to wear masks regardless of the distance that is maintained.*

7. *Masks are not required outdoors.*

- iii. *Individuals who have a medical condition that makes it hard to breathe or a disability that prevents the individual from wearing a mask can request a reasonable accommodation from the business or individuals responsible for indoor 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 mask. Reasonable accommodations could include curbside pickup, delivery, or pick up by appointment.*
- iv. *If any individual who is not an employee, contractor, or volunteer declines to wear a mask 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.*

3. *Obligations for Businesses and Individuals Responsible for Indoor and Outdoor Spaces Open to the Public.*

i. *Businesses and individuals responsible for indoor spaces open to the public shall require employees, contractors, and volunteers to wear a mask in compliance with this Order.*

ii. *Businesses and individuals responsible for indoor spaces, including indoor spaces associated with outdoor spaces, open to the public must:*

1. *Require customers and visitors to any indoor businesses or spaces open to the public to wear masks.*

2. *Provide masks 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 mask. This includes having written documentation for any employees wearing a face shield in place of, but not in addition to, a mask.*

iii. *Businesses and individuals responsible for indoor and outdoor spaces open to the public are encouraged to:*

1. *Provide, at no cost, disposable masks for customers and visitors who do not have one.*

2. *Post required mask signs in languages that are commonly spoken by customers and visitors.*

D. EDUCATION

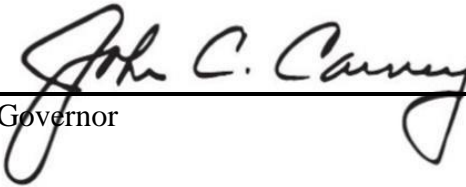
1. *Substitute Teachers. The provisions of 29 Del. C. § 5502(d), relating to the employment of pensioners, are modified as set forth below in sub-paragraphs (i) and (ii) for any current pensioner whose effective date of retirement is on or before January 1, 2022, where such pensioner accepts employment as a substitute teacher employed by a school district in the State:*

- i. *The provision of 29 Del. C. § 5502(d), requiring a 6-month separation of service prior to accepting employment under paragraph (a)(4) of section 29 Del. C. § 5502, is amended to require a one-month separation of service. Any persons who accepted employment under paragraph (a)(4) from January 11, 2022 until this sub-paragraph is rescinded, would have met the bona fide separation requirement and can continue such employment without impacting their pension rights, except to the extent that they exceed the \$30,000 annual earnings limit after the expiration of sub-paragraph ii., below (exclusive of any amounts earned during the time sub-paragraph ii, below, was in effect).*
- ii. *From January 11, 2022 until this sub-paragraph is rescinded, earnings from employment as a substitute teacher employed by a school district in the State under paragraph (a)(4) of 29 Del. C. § 5502, will not count towards the annual earnings limit of \$30,000 set forth in 29 Del. C. § 5502(d).*

E. MISCELLANEOUS.

1. *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.*

APPROVED this 10th day of January 2022 at 12:30 p.m.


Governor