

# State of Delaware



Executive Department  
Dover

## **FOURTH REVISION TO THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT**

**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**, on January 10, 2022 at 7:30 p.m. E.S.T., I issued an Amended First Revision to the State of Emergency for the State of Delaware due to a Public Health Threat, requiring Delawareans to wear masks in indoor public settings, including convenience stores, grocery stores, gyms, restaurants, bars, hair salons, malls, and casinos; and

**WHEREAS**, on January 14, 2022 at 8:00 a.m. E.S.T., I issued the Second Revision to the State of Emergency for the State of Delaware due to a Public Health Threat, allowing the Division of Public Health (DPH) to approve alternative mitigation measures in place of the mask mandate for professional and NCAA athletes; and

**WHEREAS**, on January 31, 2022 at 12:00 p.m. E.S.T., I issued the Third Revision to the State of Emergency for the State of Delaware due to a Public Health Threat, authorizing the Secretary of the Delaware Department of Transportation to issue waivers of state enforcement of laws and regulations applicable to commercial motor vehicles operating in support of the declared emergency; and

**WHEREAS**, on December 14, 2021, the Delaware Department of Education and the Delaware Department of Health and Social Services extended the emergency masking requirement in child care centers and public and private K-12 schools, and such regulations will soon expire; and

**WHEREAS**, evidence has shown that children do better when they are able to attend school full time, in person, and while the youngest children 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 face mask usage; and

**WHEREAS**, effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities; and

**WHEREAS**, the CDC recommends universal indoor masking by all individuals (ages 2 and older) in schools and child care facilities, regardless of vaccination status; and

**WHEREAS**, 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; and

**WHEREAS**, face mask use in within schools and child care facilities while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk; and

**WHEREAS**, except as specifically set forth herein, this Revision shall in no way modify, alter or amend the remaining terms of the Declaration, all of which shall remain in full force; 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 emergency masking regulations published by the Delaware Department of Education at 14 DE Admin Code 933 at Section 5.3, 14 DE Admin Code 934 at Section 5.3, and 14 DE Admin Code 815 at Section 6.0 and the Delaware Department of Health and Social Services at 16 DE Admin Code 4202 at Section 7.7.1, are hereby rescinded effective on February 8, 2022, at 12:01 a.m. E.S.T, and are implemented going forward through this State of Emergency Order, effective on February 8, 2022, at 12:01 a.m. E.S.T, and continuing until March 31, 2022 at 11:59 p.m. E.S.T., by making insertions as shown by italics as follows:

### **C. EDUCATION AND CHILDCARE**

#### *2. Obligations for Mask Wearing in Child Care Facilities and Schools.*

- i. Definitions. For purposes of this Declaration of a State of Emergency, the term “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. Early Care and Education and School-Age Centers*

- 1. All persons or associations conducting child care as defined in 14 Del. C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.*
- 2. Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.*
- 3. Masks are not required in child care facilities:*
  - a. When seated at a table to eat or drink.*
  - b. When asleep.*
  - c. When engaged in any activity that makes wearing a mask not feasible, such as swimming.*
  - d. When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.*
  - e. When outdoors.*
  - f. When children are not in the building.*
- 4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten*

*through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.*

*iii. Family and Large Family Child Care Homes*

- 1. All persons or associations conducting child care as defined in 14 Del. C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.*
- 2. Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.*
- 3. Masks are not required in child care facilities:*
  - a. When seated at a table to eat or drink.*
  - b. When asleep.*
  - c. When engaged in any activity that makes wearing a mask not feasible, such as swimming.*
  - d. When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.*
  - e. When outdoors.*
  - f. When children are not in the building.*
- 4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten*

*through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.*

*iv. Schools*

- 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.*
- 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.*
- 3. Masks are not required in school buildings:*
  - a. When seated at a table to eat or drink;*
  - b. When engaged in any activity that makes wearing a mask not feasible, such as swimming;*
  - c. When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;*
  - d. When outdoors; or*
  - e. When students are not in the building except when students travel on school buses.*
- 4. All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.*
- 5. For schools with student housing, masks are not required inside an individual student's residence hall room.*

**FURTHERMORE**, pursuant to Title 20, Chapter 31 of the Delaware Code, I do hereby order that the following provisions are hereby rescinded effective on February 11, 2022, at 8:00 a.m. E.S.T, by making deletions as shown by strike through and by making insertions as shown by italics as follows:

**~~B. 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.~~

~~8. The Division of Public Health ("DPH") shall have the discretion to permit the use of alternate COVID mitigation strategies in lieu of masks by (1) performers at performing arts venues during professional practices or performances, or (2) professional and NCAA athletes/sports teams while practicing or competing in a business or indoor space open to the public as part of their regular employment or team schedule, upon submission of a plan to [hspecontact@delaware.gov](mailto:hspecontact@delaware.gov). Plans must consider~~

~~how to prevent, reduce the spread of, and suppress COVID-19 in relation to any activity permitted under this paragraph. Plans may not be implemented until approved by DPH.~~

~~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:~~

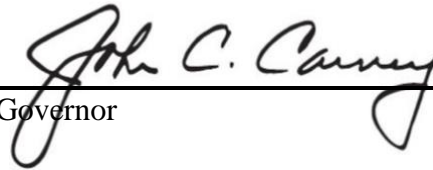
- ~~1. Provide, at no cost, disposable masks for customers and visitors who do not have one.~~
- ~~2. Post required mask signs in languages that are commonly spoken by customers and visitors.~~

~~C.~~**B. EDUCATION AND CHILD CARE**

~~D.~~**C. STATE GOVERNMENT**

~~E.~~**D. MISCELLANEOUS**

APPROVED this 7th day of February 2022 at 8:00 a.m.

  
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Governor