EXTENSION AND AMENDMENT OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19

EHR-2020-005-A

CLOTH FACE COVERINGS FOR COVID-19 PREVENTION

WHEREAS, a state of emergency continues to exists in Montana due to the global outbreak of the COVID19 Novel Coronavirus;

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can easily spread from person-to-person;

WHEREAS, the Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as “high” and has advised that person-to-person spread of the COVID-19 will continue to occur globally, including within the United States, Montana, and Gallatin County, Montana;

WHEREAS, the circumstances of this outbreak may exceed the capacity of the services, personnel, equipment, supplies and facilities of Gallatin County if proactive measures are not continued to mitigate and limit the spread of COVID-19 infections in the community;

WHEREAS, during the course of the pandemic, Montana Governor Steve Bullock has issued directives requiring the closure of non-essential businesses, providing social distancing requirements, and limiting non-essential travel;

WHEREAS, on July 15, 2020, Governor Bullock issued a directive providing for the mandatory use of face coverings by employees, contractors, customers, and members of the public five years of age and older within businesses, government offices, and indoor spaces open to the public;

WHEREAS, the July 15th Directive recognizes that “COVID-19 is an easily transmissible, potentially fatal respiratory illness that spreads in the air through droplets from infected persons,” and “COVID-19 is transmissible even by individuals who are not currently showing symptoms of the disease and who do not know they are infected;”

WHEREAS, the July 15th Directive also states that the use of face coverings “is an effective means of limiting the potential for transmission to others by both symptomatic and asymptomatic individuals infected with the virus.” Further, the Directive cites an economic analysis from Goldman Sachs finding “universal face covering usage to be a potentially effective substitute for business closures;”

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WHEREAS, the July 15th Directive states that “all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive,” and local governments “may adopt more restrictive ordinances”;

WHEREAS, on July 24, 2020, the Board adopted Emergency Local Health Rule (EHR) 2020-005 requiring that all persons within Gallatin County, Montana, five years of age or older, wear Face Coverings in certain public settings as delineated therein, including when in line to enter or inside a Business or Indoor Space Open to the Public, and further requiring that businesses and organizations require the use of Face Coverings in such settings;

WHEREAS, EHR-2020-005 also requires that all persons age five and older wear a Face Covering when inside or in line to enter a K-12 classroom; however, the Rule allows schools to exclude children in grades K through 5 from this requirement if not in conflict with state directive or guidance;

WHEREAS, EHR-2020-005 also allows for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available;

WHEREAS, on July 24, 2020, the Gallatin City-County Health Officer adopted Health Officer Order (HO) 2020-007, similarly requiring all persons within Gallatin County, five years of age or older, to wear Face Coverings in the public settings identified in EHR-2020-005 and requiring that businesses and organizations require the use of Face Coverings in such settings;

WHEREAS, on August 12, 2020, Governor Bullock issued a directive amending his July 15th Directive to require Face Coverings in public and private K-12 schools;

WHEREAS, on August 27, 2020, Governor Bullock issued a directive modifying the August 12th Directive, such that schools may narrowly allow students to remove their Face Coverings while seated and in a classroom, but only if proper Social Distancing of six feet is both possible and strictly observed;

WHEREAS, the Board desires to amend EHR-2020-005 consistent with the Governor’s August 12th and 26th Directives and the requirement for Face Coverings in grades K through 5;

WHEREAS, pursuant to its terms and to Section 5.2 of Chapter 1, Gallatin City-County Health Code, EHR-2020-005 expires ninety days after its adoption on October 22, 2020;

WHEREAS, Gallatin County continues to experience ongoing increases in the number of laboratory-confirmed cases of COVID-19 and is expected to continue identifying cases for months to come;

WHEREAS, the CDC has determined that cloth face coverings may help prevent people who have COVID-19 from spreading the virus to others and are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings;
WHEREAS, the CDC continues to recommend that people wear cloth face coverings in public settings and when around people who do not live in their household, especially when other social distancing measures are difficult to maintain;

WHEREAS, a number of public health experts – including U.S. Surgeon General Jerome Adams and Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases – have identified widespread use of face coverings as an important part of a shared effort to reduce disease spread during the ongoing COVID-19 pandemic;

WHEREAS, the Board therefore desires to extend EHR-2020-005, with the amendments discussed above, for an additional ninety-day period, ending on January 20, 2021;

WHEREAS, pursuant to § 50-2-116(1)(f), MCA, the Gallatin City-County Board of Health (Board) has the duty to “identify, assess, prevent, and ameliorate conditions of public health importance through: (i) epidemiological tracking and investigation; (ii) screening and testing; (iii) isolation and quarantine measures; (iv) diagnosis, treatment, and case management; (v) abatement of public health nuisances; (vi) inspections; (vii) collecting and maintaining health information; (viii) education and training of health professionals; or (ix) other public health measures as allowed by law”;

WHEREAS, § 50-1-101(2), MCA, defines a “condition of public health importance” as “a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community;”

WHEREAS, the Board also has the duty pursuant to § 50-2-116(1)(g), MCA, to “protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health”;

WHEREAS, pursuant to § 50-2-118, MCA, a local health officer in carrying “out the purpose of the public health system . . . shall . . . (2) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and cancelling events”, and “(5) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated”;

WHEREAS, per Chapter 1, Section 5 of the Gallatin City-County Health Code, the Board may adopt an Emergency Local Health Rule when it finds the rule: (1) “must be adopted to deal with an emergency situation affecting the public, health, safety, or welfare;” (2) “the emergency cannot be averted or remedied by any other administrative act;” and (3) at least two-thirds of the Board votes to approve the rule;

WHEREAS, per § 50-2-116, MCA, COVID-19 is a condition of public health importance and, in order to protect the public from the further introduction and spread of COVID-19 in Gallatin County, the requirements established by EHR-2020-005 for the mandatory use of face coverings in certain public settings must be extended for an additional 90-day period; and
WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that EHR-2020-005 must be amended and extended to deal with an emergency situation affecting the public health, safety, or welfare, and this emergency cannot be averted or remedied by any other administrative act.

NOW, THEREFORE, EFFECTIVE IMMEDIATELY, Emergency Local Health Rule 2020-005 is amended and extended as follows:

1. Section 3(c) of EHR-2020-005 is amended as follows, with deletions in strikethrough and additions underlined:

When they are inside a K-12 classroom or in line to enter a K-12 classroom and cannot Socially Distance from others as permitted by; however, this requirement applies to children in grade 5 or younger only to the extent required by school policy per Section 6(ej) below;

2. Section 5 of EHR-2020-005 is amended as follows, with additions underlined:

Businesses, including institutions of higher learning and entities and organizations with workers performing government functions, must:

a. Except as specifically exempted at Section 7 below, require their employees, students, customers, contractors, owners, and volunteers to wear a Face Covering while on the premises and when performing work off-site any time the employee, customer, contractor, owner, or volunteer is:

   i. Within six feet of others in an Indoor Space Open to the Public, the Business, or an indoor work area; or

3. Section 6 of EHR-2020-005 is amended as follows, with deletions in strikethrough and additions underlined:

Except as specifically exempted at Section 7 below, the following guidelines apply to childcare facilities, daycares, camps, and schools serving grades 5 and below for the use of Face Coverings on children:

a. Children under the age of 3 should not wear Face Coverings;

b. Unless Face Coverings are required by State directive or guidance, Face Coverings for children over 3 who are not napping are recommended but not required;

b. No child should wear a face covering while napping;

c. Children in grade 5 or younger should be monitored if they are wearing a Face Covering. If the Face-Covering is creating discomfort or resulting in the child touching their face frequently, reconsider whether a mask is appropriate for that child;
d. Unless such policies are required by state directive or guidance, schools should consider Face Covering policies for grades K through 5 to encourage usage among children but may implement policies that do not require Face Coverings for some or all students in those grades;

d. Parents dropping off and picking up children must wear Face Coverings while they are at the school, daycare, camp, or facility; and

e. Face Coverings are required for staff caring for children and interacting with parents; and

f. Schools, at their local discretion, may make a narrow allowance for students to remove their Face Coverings while seated and in a classroom, but only where proper Social Distancing of Six Feet is both possible and strictly observed. In all other school settings, face coverings are required unless an exemption at Section 7 applies (e.g., consuming food, strenuous physical activity, etc.). The flexibility described here applies only to classrooms where Social Distancing can occur and when children are seated at their desks. If a teacher is working one-on-one with a student, both teacher and student must wear a Face Covering. If students are working in small groups, they must be wearing Face Coverings.

4. EHR-2020-005, as amended hereby, is extended for an additional ninety (90) days, ending on July 20, 2021. The expiration date stated in EHR-2020-005 is amended as follows, with deletions in strikethrough and additions underlined:

   IT IS FURTHER ORDERED that this Emergency Rule shall remain in effect for ninety (90) days, ending on October 22, 2020/January 20, 2021.

5. All other provisions of EHR-2020-005 not amended hereby are readopted and shall remain in full force and effect.

DATED this 22nd day of October, 2020.

Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Semerd, Clerk & Recorder