SECOND EXTENSION AND AMENDMENT OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19
EHR-2020-005-B
CLOTH FACE COVERINGS FOR COVID-19 PREVENTION

WHEREAS, a state of emergency continues to exists in Montana and Gallatin County 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 daily 7-day rolling average of COVID-19 cases reported in the United States reached a high point of the pandemic in January, with an average of more than 240,000 cases reported each day;

WHEREAS, the death toll of people infected with COVID-19 in the United States surpassed an average of 3,200 deaths per day as calculated using a 7-day rolling average;

WHEREAS, hospital and health care facilities in several regions of the United States have reached or exceeded patient capacity, creating staffing and resource shortages and imperiling the quality of care of the healthcare system;

WHEREAS, the number and rate of deaths in Gallatin County has increased through the autumn and winter, and at least 41 people diagnosed with COVID-19 have died in Gallatin County, the large majority occurring since October 1, 2020;

WHEREAS, recent scientific evidence estimates that more than half of all COVID-19 cases are spread by people with no symptoms of the disease, a characteristic of the virus that allows it to spread more rapidly and readily;

WHEREAS, uncontrolled spread of COVID-19 in the community leads to increased hospitalizations and deaths and makes it difficult or impossible to prevent spread in nursing homes, assisted living facilities, and other institutions that care for people at high risk;
WHEREAS, the CDC, the White House Task Force and respected public health organizations recommend use of face coverings in public settings as an important way to limit spread of COVID-19 by limiting the distance and trajectory of respiratory droplets that spread the disease:

WHEREAS, a state report for Montana from the White House coronavirus task force attributed reductions in case rates and test positivity in December 2020 to intensified mitigation efforts in Montana, including requirements for face masks, and urged local health authorities to monitor and enforce requirements for face coverings and social distancing;

WHEREAS, by limiting the distance and trajectory of respiratory droplets, use of face coverings in indoor public spaces help prevent spread of the disease and protect the health of all individuals in those settings;

WHEREAS, universal use of face coverings helps prevent spread by individuals who do not have symptoms or have recently developed symptoms during the period of time they are most likely to pass the disease to others;

WHEREAS, hospitals and health care settings in Gallatin County and Montana typically experience higher numbers of sick and hospitalized individuals during winter months due to a variety of illnesses, a factor that increases the risk that facilities will exceed patient and staffing capacity during a surge in COVID-19 cases;

WHEREAS, the circumstances of this outbreak will 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, on July 15, 2020, former Montana Governor Steve 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;”

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

WHEREAS, on October 22, 2020, through EHR-2020-005-A, the Board amended EHR-2020-
005 consistent with Governor Bullock’s August 12th and 26th Directives and the requirement for
Face Coverings in grades K through 12, and extended EHR-2020-005 for an additional 90-day
period, expiring January 20, 2021;

WHEREAS, the Health Officer similarly amended HO-2020-007 on October 22, 2020, through
HO-2020-007-A, to require Face Coverings in grades K through 12, consistent with Governor
Bullock’s Directives and EHR-2020-005-A;

WHEREAS, on January 13, 2021, newly elected Governor Greg Gianforte issued a “Directive
Implementing Executive Order 2-2021,” effective January 15, 2021;

WHEREAS, the January 13th Directive continues the statewide mask mandate, requiring that
individuals wear a face covering at all times in any indoor space open to the public, unless
certain exceptions apply, such as a medical condition precluding the safe wearing of a face
covering;

WHEREAS, the January 13th Directive expressly recognizes that local boards of health may
adopt more restrictive rules in stating, with emphasis added: “In the interest of uniformity of
laws and to prevent the spread of disease, all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive”:

WHEREAS, Gallatin County is experiencing 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 re-extend EHR-2020-005, as amended through EHR-2020-005-A, for an additional ninety-day period, ending on April 20, 2021:

WHEREAS, EHR-2020-005, as amended through EHR-2020-005-A, requires Face Coverings in classrooms or when in line to enter classrooms, but it does not require Face Coverings in schools, generally:

WHEREAS, the Board desires to further amend EHR-2020-005 to clarify that Face Coverings are required when inside or in line to enter any “school,” not just “classrooms”:

WHEREAS, the Board also desires to amend EHR-2020-005 to clarify that the more restrictive Face Covering requirements established through this Emergency Local Health Rule apply in Gallatin County, notwithstanding any conflict with Governor Gianforte’s January 13th Directive, any subsequent Directive, or any guidance issued by a State agency:

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, as amended by 2020-005-A, is further amended and extended as follows:

1. Section 2 of EHR-2020-005 is amended as follows, with deletions in strikethrough and additions underlined:

   *All persons in Gallatin County, Montana, must wear a Face Covering consistent with the Governor’s July 15, 2020 Directive and any guidance issued by the State of Montana as this Emergency Health Rule. To the extent this Emergency Health Rule conflicts with said the Governor’s January 13th Directive, any subsequent Directive that is less restrictive than this Rule, or any guidance issued by a State agency that is less restrictive than this Rule, the more restrictive requirement shall control. This Emergency Health Rule shall control.*

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

   *When they are inside a K-12 classroom school or in line to enter a K-12 classroom school and cannot Social Distance from others while seated in a classroom, as permitted by Section 6(f) below:*
3. EHR-2020-005, as amended by EHR-2020-005-A and by this EHR-2020-005-B, is extended for an additional ninety (90) days, ending on April 20, 2021. The expiration date stated in EHR-2020-005, as amended by EHR-2020-005-A, is further 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 **January 20, 2021**.

4. All other provisions of EHR-2020-005, as amended by EHR-2020-005-A, and not amended by this EHR-2020-005-B, are readopted and shall remain in full force and effect.

5. The entirety of the requirements for Face Coverings, as required by EHR-2020-005, and as amended by EHR-2020-005-A and this EHR-2020-005-B, are attached hereto as Exhibit 1 and incorporated herein by this reference.

DATED this 20th day of January, 2021.

Becky Franks, Chair
Gallatin City-County Board of Health

**ATTEST:**

Eric Semerdic, Clerk & Recorder
EXHIBIT 1

EHR-2020-005-B

CLOTH FACE COVERINGS FOR COVID-19 PREVENTION

1. “Face Covering,” as used in this Emergency Rule, means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers the nose and mouth and surrounding areas of the lower face. A Face Covering may be factory-made or may be handmade and improvised from ordinary household materials. The Face Covering should fit snugly but comfortably against the side of the face, include multiple layers of fabric, allow for breathing without restriction, and be able to be laundered and machine-dried without damage or change to shape. A Face Covering should be replaced when it becomes dirty, wet, and/or difficult to breathe through.

Any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling is not a Face Covering under this Rule and may not be used to comply with this Rule’s requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

A video showing how to make a Face Covering and additional information about how to wear and clean Face Coverings may be found at the website of Centers for Disease Control and Prevention, at https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html.

Should a Face Covering be found to restrict airflow (difficulty breathing), a face shield that covers the eyes, nose, and mouth should be worn. These should be made of clear plastic and cleaned at least once per day (and best if cleaned multiple times per day).

“Business” as used in this Emergency Rule, means a for-profit or non-profit entity that has employees or volunteers. The term “business” includes, but is not limited to, retail stores, food and beverage establishments, public lodging, personal care providers, medical providers, pharmacies, construction sites, gyms and fitness services, indoor recreational facilities, indoor entertainment facilities, educational institutions, government entities, gas stations, repair and service providers, non-profit organizations, realty services, legal services, transportation services, and ride sharing services.

“Indoor Space Open to the Public.” as used in this Emergency Rule, means an indoor space, whether publicly owned or privately owned, where the public has access by right or invitation, express or implied, regardless of whether the public must pay to gain access. This term includes the public areas of Businesses, in addition to, but not limited to, building lobbies, common spaces, elevators, bathrooms, gathering spaces, meeting rooms, and other indoor spaces outside of private homes in which people gather.

“Social Distance” and “Social Distancing” as used in this Emergency Rule, mean keeping a safe space between yourself and other people who are not from your household in order to avoid contact with others for prolonged periods (currently defined by the CDC as 15 minutes
or more). To practice social distancing, an individual should stay at least 6 feet (about 2 arms’ length) from other people who are not from their household.

2. All persons in Gallatin County, Montana, must wear a Face Covering consistent with this Emergency Health Rule. To the extent this Emergency Health Rule conflicts with the Governor’s January 13th Directive, any subsequent Directive that is less restrictive than this Rule, or any guidance issued by a State agency that is less restrictive than this Rule, this Emergency Health Rule shall control.

3. Except as specifically exempted at Section 7, all persons in Gallatin County, Montana, including children 5 years of age or older, must wear a Face Covering outside their home or place of residence in the following situations:
   a. When they are inside, or in line to enter, any Business or Indoor Space Open to the Public, or indoor work area in which Social Distancing is not feasible;
   b. When they are inside, or in line to enter, any publicly accessible area of a government location or facility to seek or receive services;
   c. When they are inside a K-12 school or in line to enter a K-12 school and cannot Socially Distance from others while seated in a classroom, as permitted by Section 6(f) below;
   d. When they are obtaining services at a healthcare operation, including, but not limited to, hospitals, clinics, and walk-in health facilities, dentists, pharmacies, blood banks, other healthcare facilities, behavioral health providers, and facilities providing veterinary and similar healthcare services for animals – unless directed otherwise by an employee or worker at the healthcare operation; or
   e. When they are waiting for or riding on public transportation or paratransit, or while they are riding in a taxi, private car service, shuttle, tour or ride-sharing vehicle; or
   f. When they are at a construction site and Social Distancing is not feasible.

4. Except as specifically exempted at Section 7 below, drivers or operators of any public transportation, paratransit vehicle, taxi, private car service, shuttle, tour, ride-sharing vehicle, or any other vehicle for hire must wear a Face Covering at all times while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle, to reduce the spread of respiratory droplets in the vehicle. This Emergency Rule does not require any person to wear a Face Covering while driving alone, or exclusively with other members of the same family or household, in a motor vehicle.

5. 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
ii. Present in any space visited by members of the public, such as by way of example and without limitation, reception areas, grocery store or pharmacy aisles, service counters, public restrooms, cashier and checkout areas, waiting rooms, service areas, and other spaces used to interact with the public, regardless of whether anyone from the public is present at the time; or

iii. Present in any space in which food is prepared or packaged for sale or distribution to others; or

iv. Working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or

v. In any room or enclosed area in which other people (except for members of the person's own household or residence) are present and Social Distancing is not feasible.

vi. At a construction site and Social Distancing is not feasible.

b. Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business, facility, or location.

c. Provide Face Coverings for employees and volunteers, and provide accommodations and exemptions from the Face Covering requirement for employees, contractors, students, customers, volunteers, and visitors if such accommodations or exemptions are required by:

   i. State or federal disabilities laws, including the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA).

   ii. State or federal labor laws; or

   iii. State or federal public accommodations laws.

6. 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. 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;

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

   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.

7. A Face Covering is not required under the following circumstances:
   a. When a person is in an office or in an indoor work area in which others outside of that person’s household or residence are not within 6 feet of the person, as long as the public does not regularly visit the office or indoor work area. Such individuals should put on a Face Covering when coworkers are working within six feet, when being visited by a client or customer, and anywhere members of the public or other coworkers are regularly present;
   b. Any child under the age of three should not wear a Face Covering;
   c. When a person is seated at a table of a restaurant or other food service establishment, and the person is separated by at least six (6) feet from other patrons at other tables. The person should wear a mask while entering, exiting, or otherwise moving about the establishment;
   d. When a person is (1) inside or obtaining services at a business, government function, or healthcare operation, any of which are engaged primarily in providing congregate care, residential health care, or congregate shelter, and (2) the individual is engaged in activities not conducive to wearing a Face Covering, such as eating or sleeping, or the individual is in an area of the facility that is not designed for community gathering, such as a sleeping area;
   e. If a person has a medical condition, mental health condition, or disability that prevents wearing a Face Covering. This includes persons with a medical condition for whom wearing a Face Covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a Face Covering without assistance;
   f. If a person is outside in an area and situation where Social Distancing can be maintained, or when engaged in an activity that makes wearing a Face Covering physically impractical or unsafe, such as during strenuous physical exercise or when swimming;
   g. When a person is obtaining services from a personal care establishment and the services are not possible without removal of a Face Covering, such as receiving a facial massage, facial grooming, facial piercing, etc.;
   h. When a person is seeking to communicate with someone who is hearing impaired;
   i. When a person is giving a speech or engaging in an artistic, cultural, musical, or theatrical performance for an audience, provided the audience is separated by at least six feet of distance; or
   j. While a person temporarily removes their Face Covering for identification purposes.
IT IS FURTHER ORDERED that this Emergency Rule shall remain in effect for ninety (90) days, ending on April 20, 2021.

Scope and Enforcement

1. Violations of this Emergency Rule may be enforced pursuant to Sections 50-2-118, 50-2-123 and 50-2-124, MCA. which state:

50-2-118. Powers and duties of local health officers. In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representative shall:

(5) pursue action with the appropriate court if this chapter or rules adopted by the local health board or department under this chapter are violated.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

2. This Emergency Rule shall control in the case of any conflict with an existing rule of the Board or order of the Gallatin City-County Health Officer.

Severability

If any provision of this Emergency Rule, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining provisions of this Rule.