EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19
EHR-2020-004

PHASED REOPENING: PHASE TWO

WHEREAS, a state of emergency exists in Montana due to the global outbreak of the COVID-19 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, the Gallatin City-County Board of Health (Board) adopted emergency health rules similarly restricting the operation of certain businesses in Gallatin County due to the COVID-19 pandemic;

WHEREAS, on April 22, 2020, Governor Bullock issued a directive providing guidance and conditions for the phased reopening of businesses in Montana, beginning with Phase One;

WHEREAS, the April 22nd Directive recognizes the importance of individual responsibility, through good hygiene and strict adherence to social distancing, to fight against new infections, and it emphasizes the continued need to protect those most vulnerable to complications from COVID-19;

WHEREAS, the April 22nd Directive allows for implementation of the phased reopening on a county-by county basis and directs local officials to "coordinate on a regional basis and continue to assess the conditions in their jurisdictions." Further, the Directive allows local public health authorities to adopt "more restrictive approaches based on local need";
WHEREAS, the duration of each phase of reopening must be regularly evaluated by public health and emergency management professionals using the best available epidemiological data for the community. As explained in the Directive, factors that must be considered in moving from one phase to the next include the ability to: monitor new cases adequately and conduct appropriate contact tracing to prevent further spread; treat all patients safely, both COVID-19 patients and those with other health conditions; screen and test all people with COVID-19 symptoms; and maintain sufficient levels of personal protective equipment;

WHEREAS, the April 22nd Directive appropriately recognizes that negative indicators in the factors listed above “may result in the need to re-implement certain restrictions or take other protective measures;”

WHEREAS, on May 1, 2020, the Board approved Emergency Health Rule (EHR) 2020-003, which adopted the guidance and conditions provided for the first phase of the phased reopening of businesses in the Governor’s April 22nd Directive and applied them to the reopening of businesses in Gallatin County;

WHEREAS, EHR 2020-003 also allowed for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available under § 50-2-123, MCA;

WHEREAS, Governor Bullock issued a directive on May 8, 2020, that allowed for the expansion of openings for certain businesses and facilities under Phase One, including pools at licensed public accommodations, gyms, gym pools, fitness studios, theaters, and museums, as long as they adhere to strict guidelines limiting capacity, requiring social distancing, and imposing thorough sanitation requirements;

WHEREAS, on May 13, 2020, the Board adopted EHR 2020-003-A to similarly allow for the reopening of certain pools, gyms, fitness studios, theaters, and museums in Gallatin County consistent with Governor Bullock’s May 8th Directive;

WHEREAS, on May 19, 2020, Governor Bullock issued a directive establishing conditions for the second phase of the phased reopening of Montana;

WHEREAS, similar to the April 22nd Directive for Phase One, the May 19th Directive for Phase Two encourages local officials to “coordinate on a regional basis and continue to assess the conditions in their jurisdictions” and recognizes that local public health authorities may adopt “more restrictive approaches based on local need”;

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 . . .”;

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, 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, 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 Section 50-2-116, MCA, COVID-19 is a condition of public health importance that must be prevented and ameliorated through the guidance and conditions established herein for phased reopening, and to protect the public from the further introduction and spread of COVID-19 in the community;

WHEREAS, this Emergency Health Rule adopts the guidance and conditions provided for the second phase of the phased reopening of businesses in the Governor’s May 19th Directive and applies them to the reopening of businesses in Gallatin County;

WHEREAS, this Emergency Health Rule also allows for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available under § 50-2-123, MCA;

WHEREAS, consistent with the April 22nd and May 19th Directives and their deference to local control, this Emergency Health Rule provides for the re-implementation of business restrictions and other protective measures in Gallatin County when determined necessary by the Board, in close consultation with public health and emergency management professionals, based upon factors relating to new case monitoring and contact tracing, safe patient treatment, COVID-19 screening and testing, and personal protective equipment levels; and

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that this Emergency Local Health Rule must be adopted 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, THE FOLLOWING EMERGENCY LOCAL HEALTH RULE IS ADOPTED:

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Phase-One and All-Phases Guidance to Continue Except Where Modified by this Rule

1. Except where specifically modified by this Emergency Local Health Rule 2020-004, EHR-2020-003, EHR-2020-003-A, and the related guidance applicable to all phases and to Phase One remain in effect.

Progression Between Phases

1. The approach to reopening Gallatin County will occur in phases, continuing under this Rule with Phase Two.

2. The duration of each phase will be regularly evaluated in close consultation with public health and emergency management professionals. Factors considered in moving from one phase to the next include:
   A. The ability for public health professionals to monitor new cases adequately and conduct contact tracing in order to prevent spread of the disease.
   B. The ability of hospitals to treat all patients safely, both COVID-19 patients and those with other health conditions.
   C. The ability to test all people with COVID-19 symptoms using appropriate diagnostic testing.
   D. The maintenance of sufficient levels of personal protective equipment and the ability to maintain sufficient levels in the future.

3. Metrics used to monitor and assess epidemiological progress and risk, and to guide future decisions related to reopening other businesses, or closing businesses currently open, will include the:
   A. Number of COVID-19 cases, hospitalizations, and deaths in Gallatin County and Montana;
   B. Volume of diagnostic testing available and utilized and the percentage of tests that are positive;
   C. Staffing capacity and workload demands to conduct case investigations and contact tracing in a thorough and effective manner;
   D. Whether business owners and the public comply with public health rules and recommendations designed to limit spread of the disease;
   E. Data indicating known sources (location) of new infections in the community; and
   F. Wastewater sampling data measuring viral load in community wastewater treatment systems.

4. Negative indicators in the metrics in ¶ 3 above may result in the amendment of this Rule to re-implement certain restrictions or take other protective measures.

Guidance Applicable to All Phases

1. Individuals should continue to practice good hygiene by adhering to the following guidelines:
   A. Wash your hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces.
   B. Avoid touching your face whenever possible.
C. Sneeze or cough into a tissue, or the inside of your elbow.
D. Disinfect frequently used items and surfaces as much as possible.
E. Use non-medical face coverings while in public, especially in circumstances that do not readily allow for appropriate physical distancing (e.g., grocery/retail stores, pharmacies, public transportation).

2. People who feel sick should stay at home:
   A. Do not go to work or school.
   B. Contact and follow the advice of your medical provider.
   C. Follow local health department guidance on isolation and quarantine.

3. Employers should:
   A. Develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding:
      i. Social distancing and protective equipment.
      ii. Temperature checks and/or symptom screening.
      iii. Working with public health officials in efforts to test, isolate, quarantine, and pursue contact tracing in order to slow spread of the disease.
      iv. Sanitation.
      v. Use and disinfection of common and high-traffic areas.
   B. Monitor workforce for indicative symptoms. Do not allow people with symptoms of COVID-19 to work.
   C. Collaborate with public health officials when implementing policies and procedures for workforce contact tracing following an employee’s COVID-19 positive test result.
   D. Encourage voluntary participation of employees in any surveillance testing designed to provide community-wide early warning by local public health officials.

Phase Two: Increase in Permissible Group Size to Groups of 50

1. Effective June 1, 2020, avoid gathering in groups of more than 50 people in circumstances that do not readily allow for appropriate physical distancing. It is recommended to continue to social distance in gatherings of any size.

2. There should be no events with more than 50 people unless social distancing can be achieved and maintained throughout the event.

3. Due to the inherently unstructured and socially-focused nature of certain gatherings—such as wedding receptions, live music concerts, festivals, and fairs—such events cannot be conducted with appropriate physical distancing and pose a condition of public health importance. As a result, such events should be limited to 50 people or fewer. Events greater than 50 people may be held only if the inherent nature of the event allows predictable and manageable social interactions through a structured physical layout, identified seating arrangements, and controls for ingress and egress, such as at a school graduation or religious service.
4. If you are planning an event with more than 50 people, you should consult with the Gallatin City-County Health Department on a plan to implement and maintain adequate social distancing.

5. Physical distancing guidelines for groups and gatherings do not apply to household members.

Phase Two: Individuals and Employers

1. Effective June 1, 2020, the below guidelines apply to individuals and businesses during Phase Two. Individuals and businesses also must follow the Phase Two guidelines provided in the attached Appendix A, also in effect June 1.

2. Vulnerable individuals should continue to adhere to the stay-at-home guidance.

3. All businesses and government offices may operate, provided they adhere to strict physical distancing and the conditions in this Emergency Local Health Rule, the Phase Two Guidelines provided in the attached Appendix A, and all other Emergency Local Health Rules and guidance remaining in effect.

4. Businesses must follow CDC sanitation protocols. Businesses that provide services where social distancing is difficult and that provide services necessary to daily living (such as grocery stores and pharmacies) should consider mandatory use of face coverings for staff and the public.

5. Restaurants, bars, breweries, distilleries and casinos remain in the same operational status as Phase One, but with an increase to 75 percent capacity. These businesses must continue to maintain strict physical distancing and adhere to the reopening guidelines in compliance with Appendix A, attached (e.g. sitting and standing at bars or counters is not allowed).
   A. An owner, operator, or employee of a restaurant, bar, brewery, distillery, or casino who does not comply with the guidelines provided in Appendix A, attached, is in violation of this Emergency Health Rule.

6. Gyms, indoor group fitness classes, pools, spas, and hot tubs can operate at 75 percent capacity but only if they can adhere to strict physical distancing, exercise frequent sanitation protocols, and adhere to the guidelines provided in Appendix B, attached.
   A. An owner, operator, or employee of a gym, fitness studio, or public accommodation, who does not comply with the guidelines provided in Appendix B, attached, is in violation of this Emergency Health Rule.

7. Concert halls, bowling alleys, and other places of assembly may operate with reduced capacity in compliance with Appendix B, attached, and must adhere to strict physical distancing guidelines set forth for group gatherings and follow CDC sanitation protocols.
   A. An owner, operator, or employee of a place of assembly who does not comply with the guidelines provided in Appendix B, attached, is in violation of this Emergency Health Rule.

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8. Child-care facilities can increase capacity consistent with the guidelines contained in the Governor’s April 1, 2020 Directive on childcare and the DPHHS Information for Child Care, “Frequently Asked Questions: COVID-19,” and if strict physical distancing guidelines can be implemented; however, the 24-person cap per facility no longer applies effective June 1, 2020.

9. Employers should continue to permit telework as much as possible and where feasible, but refer to guidelines for Phase One where telework is not possible.

10. Senior living or assisted living facilities must continue to follow the guidelines of Phase One.

11. Outdoor recreation remains in the same operational status as Phase One.

Scope and Enforcement

1. Violations of this Rule shall 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 Rule expires ninety (90) days after the date set forth below.

3. If any provision of this 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.

DATED this 28th day of May, 2020.

Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Semerad, Clerk & Recorder