



## **EMERGENCY SECRETARY'S ORDER**

### **Pursuant to 16 Del.C. §§ 122 & 128 and 29 Del.C. § 10119**

#### **16 DE Admin. C. § 4202: *Control of Communicable and Other Disease Conditions***

#### **AUTHORITY**

Pursuant to 16 **Del.C. §§ 122(3)(a) & 128** and 29 **Del.C. § 10119**, the Department of Health and Social Services (“Department”) is adopting emergency regulatory amendments to 16 **DE Admin. C. § 4202: *Control of Communicable and Other Disease Conditions***. Additionally, 29 **Del.C. § 10119** authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C. § 10115**. Moreover, 16 **Del.C. § 122(3)(a)** authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 **Del.C. § 128** authorizes the Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

#### **REASON FOR THE EMERGENCY ORDER**

For the first time since March 2020, children aged 5-17 have the highest COVID-19 rates in Delaware. Only 55% of children aged 12-18 are vaccinated and children 11 years old and younger are currently unable to be vaccinated. The vast majority of positive cases in Delaware are among the unvaccinated. Low vaccination rates among children make them especially susceptible to contracting the disease.

Delaware’s tiered approach to mitigating COVID-19 is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. Emergency regulations to require mask usage by staff and students in kindergarten and above were published in the September 2021 *Register* at 25 **DE Reg. 246** (09/01/21).

In addition, school staff must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state’s requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the September amendment of Section 7.7.

## EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 16 **DE Admin. C.** § 4202: *Control of Communicable and Other Disease Conditions*, specifically, Section 7.7 which requires all schools to institute a testing program is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

### **7.7 COVID-19 Mitigation and Prevention**

#### 7.7.1.5 Testing Program

7.7.1.5.1 Staff is defined in the Division of Public Health Guidance.

7.7.1.5.2 Before their start date, all new staff must be tested for COVID-19 in accordance with Division of Public Health Guidance or show proof of vaccination in a manner consistent with Division of Public Health Guidance.

7.7.1.5.3 All unvaccinated staff must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

#### 7.7.1.6 Schools shall amend their current practices to include:

7.7.1.6.1 Mechanisms, including disciplinary mechanisms, for addressing staff refusals to provide testing results or vaccination status, or authorize release of such results or status, to the school; and

7.7.1.6.2 Maintaining records of staff vaccination status and testing results in the same manner as other confidential personal healthcare information as required by applicable law.

#### 7.7.1.7 Upon request from the Division of Public Health, schools must produce documentation sufficient to demonstrate compliance with this subsection.

#### 7.7.1.8 All schools must submit a report of the number of vaccinated staff at a time and manner determined by the Division of Public Health.

This Emergency Order shall take effect on November 1, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

## PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov).

## ORDER

It is hereby ordered, this 15<sup>th</sup> day of October 2021, that the above referenced amendment to 16 **DE Admin. C.** § 4202: *Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** § §122(3) & 128, and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.



---

Molly K. Magarik, MS  
Secretary