Enforcement of Social Distancing Measures

Effective: 10/7/20

Pursuant to the authority vested in the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, and Executive Order 202.14, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by renaming Part 66 and adding a new Subpart 66-3, and adding a new Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

The title of Part 66 is amended as follows:

Immunizations and Communicable Diseases

A new Subpart 66-3, titled COVID-19 Emergency Regulations, is added to read as follows:

66-3.1 Duration and Applicability

The provision of this Subpart shall apply for the duration of any state disaster emergency declared pursuance to sections 28 and 29-a of the Executive Law related to the outbreak of COVID-19 in New York State. To the extent any provision of this Subpart becomes inconsistent with any Executive Order, the remainder of the provisions in this Subpart shall remain in effect and shall be interpreted to the maximum extent possible as consistent with such Executive Orders.

66-3.2 Face-Coverings

(a) Any person who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or face-covering when in a public place and unable to maintain, or when not maintaining, social distance.

(b) Any paying passenger of a public or private transportation carrier or other for-hire vehicle, who is over age two and able to medically tolerate a face covering, shall wear a mask or face-covering over the nose and mouth during any such trip; any employee of such public or private transportation carrier who is operating such public or private transport, shall likewise wear a mask or face-covering which covers the nose and mouth while there are any paying passengers in such vehicle.

(c) Any employee who is present in the workplace shall be provided and shall wear a mask or face-covering when in direct contact with customers or members of the public, or when unable to maintain social distance. Businesses must provide, at their expense, such face coverings for their employees.

(d) Business operators and building owners, and those authorized on their behalf or otherwise authorized to use the building shall deny admittance to any person who fails to comply with this section and shall require or compel such persons' removal. Provided, however, that this regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(e) For purposes of this section:

(i) Face-coverings shall include, but are not limited to, cloth masks (e.g. homemade sewn, quick cut, bandana), surgical masks, N-95 respirators, and face shields.

(ii) A person shall be considered as maintaining social distancing when keeping at least six feet distance between themselves and any other persons, other than members of such persons' household.

66-3.3 Non-essential gatherings

(a) There shall be no non-essential gatherings of greater than ten individuals for any reason at any location in the state, including but not limited to parties, celebrations or other social events. This restriction may be modified by any Executive Order issued pursuant to Executive Law Section 28 and 29-A implementing the phased re-opening of New York businesses and the relaxation of social distancing rules by region.

(b) No person, business, or other entity, shall encourage or promote any non-essential gathering including those on public property such as streets, sidewalks, parking lots, parks, playgrounds, or beaches, that would violate subdivision (a) of this section.

(c) All non-essential gatherings that are permitted pursuant to this section shall comply with social distancing protocols and cleaning and disinfection guidelines issued by the Department.

(d) Subdivision (a) of this section shall not apply to any essential business, as defined by the New York State Department of Economic Development d/b/a Empire State Development (ESD), pursuant to the authority provided in Executive 202.6, or as further defined in this Subpart.

66-3.4 Business operations

(a) All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Except as may otherwise be permitted by any Executive Order issued pursuant to Executive Law Section

28 and 29-A implementing the phased re-opening of New York businesses and the relaxation of social distancing rules by region, each employer shall reduce the in-person workforce at any work locations by 100%, provided that any essential business or entity providing essential services or functions shall not be subject to such in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function.

(b) Any business not otherwise described herein may be deemed essential after requesting an opinion from the Empire State Development Corporation, which shall review and grant such request, should it determine that it is in the best interest of the state to have the workforce continue at full capacity in order to properly respond to this disaster.

(c) Essential businesses include, but are not limited to, the following: essential health care operations including but not limited to any entity or individual licensed, certified, registered or otherwise approved pursuant to Articles 5, 28, 30, 35, 36 or 40 of the Public Health Law, or Articles 131, 131-B, 131-C, 137, 139, 140, 153, 154, 163, 164 or 165 of the Education Law, and any other research or laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure, and hotels and places of accommodation; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products,

including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public.

(d) Except as may otherwise be permitted by any Executive Order issued pursuant to Executive Law Section 28 and 29-A implementing the phased re-opening of New York businesses and the relaxation of social distancing rules by region, all restaurants and bars shall cease serving patrons food or beverages on premises, and shall only serve food or beverages for off-premises consumption which may include take-out or delivery services.

(e) Except as may otherwise be permitted by any Executive Order issued pursuant to Executive Law Section 28 and 29-A implementing the phased re-opening of New York businesses and the relaxation of social distancing rules by region, all indoor common portions of retail shopping malls with in excess of 100,000 square feet of retail space available for lease shall remain closed. Any stores located within such shopping malls, which have their own external entrances open to the public, separate from the general mall entrance, and which are essential businesses may remain open, provided that any restaurant shall limit itself to take out or delivery food services, and that any interior entrances to common areas of the mall remain closed and locked.

66-3.5 Penalties

A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Subpart are subject to a maximum fine of $1,000 for each violation; provided that individuals or entities who violate section

66-3.3(a) or (b) shall be subject to a maximum fine of $15,000 for each violation. For purposes of civil penalties, each day that there is a non-essential gathering or that an entity operates in a manner inconsistent with the Subpart shall constitute a separate violation under this Subpart.

A new section 2.60 is added to read as follows

2.60. Enforcement of Social Distancing Measures.

For purposes of civil enforcement, the provisions of Subpart 66-3 of this Title are incorporated herein, and a violation of the provisions of Subpart 66-3 shall be deemed a violation of this Chapter. All local health officers shall take such steps as may be necessary to enforce the provisions of Subpart 66-3 in accordance with the Public Health Law and this Chapter.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new Subpart 66-3 is sections 201 and 206 of the Public Health Law. The statutory authority for adding new section 2.60 is section 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health ("Department") to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PPHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease. Pursuant to Executive Order 202, the Commissioner may directly issue emergency regulations amending the State Sanitary Code.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a hospital and can be fatal. According to Johns Hopkins'

Coronavirus Resource Center, to date, there have been over 8 million cases and 437,604 deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

COVID-19 was found to be the cause of an outbreak of illness in Wuhan, Hubei Province, China in December 2019. Since then, the situation has rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Subsequently, on March 13, 2020, President Donald J. Trump declared a national emergency in response to COVID-19, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

New York State first identified cases on March 1, 2020 and has since become the national epicenter of the outbreak. On March 7, 2020, with widespread transmission rapidly increasing within certain areas of the state, Governor Andrew M. Cuomo issued an Executive Order declaring a state disaster emergency to aid in addressing the threat COVID-19 poses to the health and welfare of New York State residents and visitors. With over 200,000 deaths and nearly 5 million cases in the country, this pandemic has had a devastating effect on the United States. As part of ongoing efforts to address this pandemic, Governor Cuomo has issued Executive Orders to implement measures aimed at limiting the spread and/or mitigating the impact of

COVID-19 within the state. Specifically, several Executive Orders were issued to require closures of certain non-essential businesses. On March 22, 2020, Governor Cuomo announced the implementation of "New York State on Pause," a 10-point policy to ensure the uniform public health and safety of New Yorkers. As part of implementing this policy, numerous Executive Orders were issued to, among other things, require the reduction of the in-person workforce of non-essential work locations by 100% and order the cancellation/postponement of non-essential gatherings of any size for any reason, which have both subsequently been modified by more recent Executive Orders, consistent with phased regional reopening criteria.

Additionally, Executive Orders have continued to be issued to extend restrictions on certain business operations. Executive Orders and corresponding Department guidance have also been issued to require adherence to certain measures by restaurants (i.e., outdoor seating in Phase 2 regions) to account for the phased regional reopening of the State. Although New York State has shifted to a regional reopening, resulting in a phased relaxation of these prohibitions/requirements, "New York on PAUSE" still applies unless otherwise explicitly modified by Executive Order.

In light of this situation, these regulations are necessary to further implement social distancing measures to control the spread of communicable disease, in situations in which the Governor has declared a state disaster emergency.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to codify certain provisions regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders. Accordingly, this regulation imposes no additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement. Notably, pursuant to section 12-b of the PHL, any person who willfully violates these regulations may be subject to criminal penalties including imprisonment not exceeding one year, or a fine not exceeding $10,000, or by both. However, pursuant to Executive Order 202.14, the criminal penalty for the willful violation of these regulations is currently limited to $1,000. Further, pursuant to Executive Order 202.68, a violation of the prohibition against non-essential gatherings has a maximum civil penalty of $15,000.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

This regulation imposes no additional local mandates beyond what has already been required pursuant to Executive Orders.

Duplication:

The purpose of this regulation is to codify certain provision regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders. There is no duplication of federal law.

Alternatives:

The alternative would be to not codify provisions of Executive Orders into the Department's regulations. However, this alternative was rejected, as the Department believes that codification will facilitate increased awareness and enforcement.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, Governor Cuomo has issued Executive Orders to implement measures aimed at limiting the spread and/or mitigating the impact of COVID-19 within the state, that have a significant impact on small business and local government. Specifically, on March 22, 2020, Governor Cuomo announced the implementation of "New York State on Pause," a 10-point policy to ensure the uniform public health and safety of New Yorkers. As part of implementing this policy, numerous Executive Orders were issued to, among other things, require the reduction of the in-person workforce of non-essential work locations by 100% and order the cancellation/postponement of non-essential gatherings of any size for any reason, which have both subsequently been modified by more recent Executive Orders, consistent with phased regional reopening criteria. Additionally, Executive Orders have continued to be issued to extend restrictions on certain business operations. Executive Orders and corresponding Department guidance have also been issued to require adherence to certain measures by restaurants (i.e., outdoor seating in Phase 2 regions) to account for the phased regional reopening of the State. Although New York State has shifted to a regional reopening, resulting in a phased relaxation of these prohibitions/requirements, "New York on PAUSE" still applies unless otherwise explicitly modified by Executive Order.

As the purpose of these regulations is to codify existing obligations imposed pursuant to the above referenced Executive Orders, the effect of this regulation is expected to be minimal.

Compliance Requirements:

These regulations codify existing obligations imposed pursuant to the above referenced Executive Orders and are intended to enforce these social distancing measures to control the spread of communicable disease. To comply with these regulations, small businesses that are non-essential must reduce their in-person work force by 100%, unless subject to re-opening of relaxation of social distancing requirements pursuant Executive Orders establishing phased regional reopening criteria and requirements.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to codify certain provisions regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders. Accordingly, this regulation imposes no additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As the proposed regulations codify existing provisions regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County
Cattaraugus County
Cayuga County
Chautauqua County
Chemung County
Chenango County
Clinton County
Columbia County
Cortland County
Delaware County
Essex County
Franklin County
Fulton County
Genesee County
Greene County
Hamilton County
Herkimer County
Jefferson County
Lewis County
Livingston County
Madison County
Montgomery County
Ontario County
Orleans County
Oswego County
Otsego County
Putnam County
Rensselaer County
Schenectady County
Schoharie County
Schuyler County
Seneca County
St. Lawrence County
Steuben County
Sullivan County
Tioga County
Tompkins County
Ulster County
Warren County
Washington County
Wayne County
Wyoming County
Yates County

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations codify existing obligations imposed pursuant to several Executive Orders and are intended to enforce these social distancing measures to control the spread of communicable disease. Specifically, on March 22, 2020, Governor Cuomo announced the implementation of "New York State on Pause," a 10-point policy to ensure the uniform public health and safety of New Yorkers. As part of implementing this policy, numerous Executive Orders were issued to, among other things, require the reduction of the in-person workforce of non-essential work locations by 100% and order the cancellation/postponement of non-essential gatherings of any size for any reason, which have both subsequently been modified by more recent Executive Orders, consistent with phased regional reopening criteria. Additionally, Executive Orders have continued to be issued to extend restrictions related to closures of indoor common portions of retail shopping malls with an excess of 100,000 square feet of retail space. Executive Orders and corresponding Department guidance have also been issued to require adherence to certain measures by restaurants (i.e., outdoor seating in Phase 2 regions) to account for the phased regional reopening of the State.

Although New York State has shifted to a regional reopening, resulting in a phased relaxation of these prohibitions/requirements, "New York on PAUSE" still applies unless

otherwise explicitly modified by Executive Order. The Executive Order provisions referenced above have applied and continue to be applied equally to rural areas of the state.

Compliance Costs:

The purpose of this regulation is to codify certain provisions regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders. Accordingly, this regulation imposes no additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As the proposed regulations codify existing provisions regarding social distancing that have been issued by Governor Andrew M. Cuomo through several Executive Orders, any adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

Where compliance with routine administrative procedures would be contrary to public interest, the State Administrative Procedure Act (SAPA) § 202(6) empowers state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a period of time for public comment, cannot be met because to do so would be detrimental to the health and safety of the general public.

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a hospital and can be fatal. According to Johns Hopkins' Coronavirus Resource Center, to date, there have been over 8 million cases and 437,604 deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

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As part of ongoing efforts to address this pandemic, Governor Cuomo has issued (and continues to issue) Executive Orders to implement measures aimed at limiting the spread and/or mitigating the impact of COVID-19 within the State. Specifically, on March 22, 2020, Governor Cuomo announced the implementation of "New York State on Pause," a 10-point policy to ensure the uniform public health and safety of New Yorkers. As part of implementing this policy, numerous Executive Orders were issued to, among other things, require the reduction of the in-person workforce of non-essential work locations by 100% and order the cancellation/postponement of non-essential gatherings of any size for any reason, which have both subsequently been modified by more recent Executive Orders, consistent with phased regional reopening criteria. Additionally, Executive Orders have continued to be issued to extend restrictions related to closures of indoor common portions of retail shopping malls with an excess of 100,000 square feet of retail space. Executive Orders and corresponding Department guidance have also been issued to require adherence to certain measures by restaurants (i.e., outdoor seating in Phase 2 regions) to account for the phased regional reopening of the State.

Although New York State has shifted to a regional reopening, resulting in a phased relaxation of these prohibitions/requirements, "New York on PAUSE" still applies unless otherwise explicitly modified by Executive Order. Further, given the emergent nature of the COVID-19 outbreak, these emergency regulations are necessary to implement social distancing measures to continue to control the spread of communicable disease, in situations in which the Governor has declared a state disaster emergency.