Enforcement of Social Distancing Measures

Effective: 11/27/20

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 pursuant 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 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 other 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. Employees of food service establishments must wear a mask or face-covering at all times while at their place of work. 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, and N-95 respirators.

(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.

(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) There shall be no non-essential gatherings on sidewalks, streets or other public property within 100 feet of any food service establishment, or any business entity holding a liquor license from the State Liquor Authority.

(d) 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.

(e) 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 or prohibited by Executive Order issued pursuant to Executive Law Section 28 and 29-A, no establishment licensed by the State Liquor Authority ("SLA") for on premises consumption of alcoholic beverages, licensed by the SLA pursuant to Sections 63 or 79 of the Alcoholic Beverage Control law, or permitted as a food service establishment pursuant to the State Sanitary Code, shall remain open between the hours of 10:00 p.m. and 5:00 a.m., except for the service of food and non-alcoholic beverages for curbside take out or delivery if otherwise permitted.

(e) Except as may otherwise be permitted by any Executive Order issued pursuant to Executive Law Section 28 and 29-A, 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.

(f) Except as may otherwise be prohibited or permitted by Executive Order issued pursuant to Executive Law Section 28 and 29-A, no gym or fitness center shall remain open between the hours of 10:00 p.m. and 5:00 a.m.

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 240,000 deaths and over 10 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.

These regulations update previously filed emergency regulations consistent with the Governor's Executive Order that gyms as well as restaurants, bars and other businesses serving alcohol close at 10:00 pm daily. The regulations also clarify that employees of food service establishments must wear a mask or face-covering at all times while at their place of work.

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, compliance with this regulation does not impose any 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. Local governments are entitled to retain any penalty assessed due to a violation of Executive order pursuant to Executive Order 202.68.

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.

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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.

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, compliance with this regulation does not impose any additional costs to regulated parties.

Compliance Requirements:

These regulations generally 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. These regulations also update previously filed emergency regulations consistent with the Governor's direction that gyms as well as restaurants, bars and other businesses close at 10:00 pm daily. The regulations also clarify that employees of food service establishments must wear a mask or face-covering at all times while at their place of work.

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, compliance with this regulation does not impose any 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	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady 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:

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Compliance Costs:

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Minimizing Adverse Impact:

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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 is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

EMERGENCY JUSTIFICATION

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