OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR

KRISTEN JURAS
LT. GOVERNOR

TO: **All residents of Montana, including its State officers and agencies**
FROM: **Governor Greg Gianforte**
DATE: **February 12, 2021**
RE: **Directive Implementing Executive Order 2-2021**

Executive Order 2-2021 declares that a state of emergency exists in Montana due to the global outbreak of COVID-19.

During a state of emergency, the Governor is authorized to suspend regulatory statutes, orders, or state agency rules that "prevent, hinder, or delay necessary action in coping with the emergency …," MCA 10-3-104(2)(a), and to control "the movement of persons within the area …" *Id.* at 10-3-104(2)(c). "[A]ll officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request."

The response to COVID-19 must by necessity be dynamic, informed by new information and medical solutions as they become available. In response to changing circumstances, I hereby rescind and replace all prior directives implementing Executive Order 2-2021 and direct the following measures be in place in the State of Montana effective immediately:

GENERAL MASKING
Individual responsibility remains Montana's best tool to combat the spread of COVID-19. Montanans are encouraged to wear masks and should follow the best industry practices adopted by any business they visit to slow the spread of the virus.

PHASED REOPENING OF MONTANA
The phased approach to reopening Montana is no longer in force.

PUBLIC GATHERINGS
Any public gatherings or events should be managed in a way that accommodates the Center for Disease Control and Prevention (CDC) social distancing guidelines.

BUSINESSES
Businesses face diverse challenges in this emergency and need flexibility to serve their

customers in a healthful environment. Therefore, businesses should make reasonable efforts to develop and implement appropriate policies based on industry best practices during this emergency. Where no such industry practices exist, such policies should be developed and implemented in accordance with federal, state, and local regulations and guidance regarding:

1) Masking;
2) Social distancing;
3) Temperature checks and/or symptom screening;
4) Testing, isolating, and contact tracing, in collaboration with public health authorities;
5) Sanitation;
6) Use of disinfection of common and high-traffic areas;
7) Teleworking.

FOOD AND BEVERAGE INDUSTRIES

The following places are permitted and encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and to use precautions in doing so to mitigate the potential transmission of COVID-19, including social distancing:

- Restaurants, food courts, cafes, coffeehouses, and other similar establishments offering food or beverage for on-premises consumption.
- Alcoholic beverage service businesses, including bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other establishments offering alcoholic beverages for on-premises consumption.
- Cigar bars.
- Health clubs, health spas, gyms, aquatic centers, pools and hot springs, indoor facilities at ski areas, climbing gyms, fitness studios, and indoor recreational facilities.
- Movie and performance theaters, nightclubs, concert halls, bowling alleys, bingo halls, and music halls.
- Casinos.

Customers may order and pay by telephone or online from a retailer or manufacturer licensed to sell alcoholic beverages in the State of Montana. A retailer or manufacturer licensed to sell alcoholic beverages in the state of Montana may deliver for sale the alcoholic beverages for which it is licensed. Delivery must be conducted by the licensee's employees over the age of 21 and age of the purchaser and recipient must be verified at the time of delivery. The purchased alcohol must be hand-delivered to the purchaser.

Consistent with the above, strict compliance with MCA §§ 16-3-101, -219, -243, and -418, and other applicable laws are waived pursuant to MCA § 10-3-104 and other applicable provisions of law.

SCHOOLS

Access to school is essential to the developmental, social, mental, and educational needs of school-age children. Schools should make reasonable efforts to follow school guidelines and

best practices recommended by the CDC and the Montana Office of Public Instruction.

LOCAL GOVERNMENT

Local governments may modify the hours that their offices are open for the transaction of business. Strict compliance with MCA §§ 7-4-2211, 3-6-106, 7-4-102, and other related statutes governing the business hours of local governments in Montana are suspended during the emergency, but only to the extent necessary to respond to the emergency and to protect public health and safety. Local governments modifying office hours under this Directive must first obtain approval from their political subdivision or its delegates, and should endeavor to maintain compliance with state laws for office hours wherever it can be accomplished safely.

Local governments are not relieved of state law requirements to maintain office hours for those offices and functions that are necessary for the maintenance of public health and human safety. Local governments must, whenever practicable, continue providing services via phone or other electronic means to limit the disruption in outward facing government services as much as possible and practicable.

Local governments may modify their vacation and sick leave policies in response to the emergency to minimize the economic impact on their employees. Such policies may include permitting impacted employees who have exhausted their leave to accrue negative balances of sick or vacation time for the duration of the emergency. Local governments will bear all legal and financial responsibility related to any such policy modifications. Strict compliance with the local government portions of MCA § 2-18-601 *et seq.* and related statutes is suspended for this limited purpose only, and only to the extent necessary for responding to the emergency.

Local governments may modify their employment policies, including modifications to the minimum work-week hours requirements. Strict compliance with MCA § 7-5-4111 and related statutes is suspended but only to the extent necessary for responding to the emergency.

Local governments may toll and hold in abeyance certain deadlines provided in state law and regulation including the deadlines provided at:

- MCA Title 7 – Local Government Chapter 2, Part 43-48; Chapter 5, Parts 1 and 42; Chapter 15, Parts 42-43; Chapter 21, Part 10; and § 7-5-2123(2)
- MCA Title 76 – Land Resources and Use Chapters 1-8
- Local Government actions relating to ARM 17.36 Subdivision/On-Site Wastewater Treatment (Subchapters 1,3,6,8,9)

Strict compliance by local governments with deadlines provided in the above rules and statutes is suspended only to the extent necessary to respond to the emergency, with deadlines tolled on the date they began.

A local government may not toll a statutory deadline with an effect on public safety or human health.

All other portions of the above rules and statutes remain in effect, including all other procedural requirements.

Local governments are encouraged to find ways to provide for the right of public participation consistent with social distancing practices, including virtual participation where legal and practicable.

ECONOMIC DEVELOPMENT FUNDING

Strict compliance with the Big Sky Economic Development Program in MCA Title 90, Chapter 1, part 2, and ARM 8.99.917 and 8.99.918, continues to be suspended to allow the Montana Department of Commerce to establish a new application and guidelines to administer the Big Sky Economic Development COVID-19 Impact Program, funded by up to $3 million of Big Sky Economic Development Program funds.

EVICTION AND FORECLOSURE LIMITATIONS

Evictions and foreclosure actions against Montana renters and homeowners for failure to pay are prohibited in the same manner as established by CDC and the U.S. Department of Health and Human Services (HHS) temporary orders in federal law.

MOTOR CARRIER RELIEF

Strict compliance with the "hours of service" and associated Electronic Logging Device (ELD) regulations, as provided in ARM 18.8.1502 (incorporating by reference 49 CFR. part 395), are suspended to the extent those regulations apply to drivers of commercial motor vehicles while transporting farm inputs, food, livestock, feed/hay, and medical supplies. But if a driver informs a carrier that the driver needs immediate rest, the "hours of service" requirements, enacted in MCA § 61-10-154 and implementing regulations, ARM 18.8.1502, must be followed. Commercial motor vehicle carriers, while under this Directive, shall not require or allow fatigued drivers to operate a motor vehicle.

The weight limits for commercial vehicles provided for in Title 61, Chapter 1, Part 1, MCA, and ARM 18.8.431 are temporarily suspended under MCA §§ 61-10-111 and 10-3-104, to the extent that the maximum permissible weight is increased by 10 percent for commercial vehicles providing supplies to help support response to the emergency. This Directive serves as the special permit needed for the increase in weight. The weight increase does not apply to non-interstate load posted bridges and roads. Nor does this Directive waive or suspend any other state or federal regulation pertaining to commercial motor carriers and commercial driver license requirements or relieve carriers and commercial drivers from operating their commercial motor vehicles in a safe and prudent manner.

The Montana Department of Transportation is directed to continue and support the Federal Motor Carrier Safety Administration "hour of service waiver," waive temporary registration and temporary fuel permits for vehicle providing supplies to help support response to the emergency, honor other jurisdictions' requests to suspend enforcement of the licensing and

registration requirements for the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP) for vehicle providing supplies to help support response to the emergency, and request other jurisdictions temporarily suspend enforcement on Montana based carriers licensing and registration requirements for the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP) for vehicles providing supplies to help support the emergency.

HEALTH CARE REGULATORY RELIEF

The term "health care professional" means a person engaged in an occupation or profession that requires licensure through the Board of Medical Examiners, Board of Pharmacy, Board of Nursing, Board of Nursing Home Administrators, Board of Radiologic Technologists, Board of Respiratory Care Practitioners, Board of Clinical Laboratory Specialists, Board of Behavioral Health, Board of Physical Therapy Examiners, Board of Occupational Therapy Practice, Board of Sanitarians, or Board of Psychologists.

Licensing:

Strict compliance with ARM 24.101.417 is waived for the purposes of licensing health care professionals for the duration of the emergency so that health care facilities may bring in additional paid staff to Montana as soon as needed and possible.

MCA § 37-1-141(8) and any other applicable statutes and rules are suspended to allow inactive, retired, or other health care professionals who have left the practice of their profession in the last five years and who have a clean disciplinary record to reactivate their license without meeting current licensure requirements.

MCA § 37-1-305(2) and any other applicable statute or administrative rule is suspended to allow DPHHS to issue a temporary practice permit, without charging a fee, to any health care professional whose Montana license has been inactive or terminated for non-disciplinary reasons for a period of five years or less. Temporary permits issued under this Directive are valid until rescission of this Directive or Executive Order 2-2021.

The following administrative rules are suspended to the extent they require continuing education, certification, evaluation, or other demonstration of competency after a period of inactivity or non-disciplinary termination of license:

Pharmacy	ARM 24.174.504
Behavioral Health	ARM 24.219.509, 24.219.609, 24.219.709, 24.219.921, 24.219.5012, and MAR 24-219-35
Clinical Laboratory Science	ARM 24.129.611(1)(b)
Physician, PA, ECP	ARM 24.156.603(3), 24.156.615(3)(a), 24.156.618, 24.156.1618(2), 24.156.2719
Nursing Home Admin.	ARM 24.162.515(6)
Occupational Therapy	ARM 24.165.604(3)
Respiratory Care Practice	ARM 24.213.402(7), 24.213.415(2) and (3)

Speech Language Pathology	ARM 24.222.513(4)
Sanitarians	ARM 24.216.2104

Certain late fees associated with licensure renewals administered by DPHHS are waived for the duration of the emergency.

- MCA § 50-57-205 is waived as it relates to requiring a wholesale food establishment to remit late fees to DPHHS for failure to timely renew a license, but only to the extent it conflicts with this Directive.
- MCA § 50-50-205 is waived as it relates to requiring a retail food establishment to remit late fees to DPHHS for failure to timely renew a license.
- MCA § 50-51-204 is waived as it relates to requiring a hotel, motel, or rooming house to remit late fees to DPHHS for failure to timely renew a license.
- MCA § 50-52-202 is waived as it relates to requiring a tourist campground or trailer court to remit late fees to DPHHS for failure to timely renew a license.
- MCA § 50-53-203 is waived as it relates to requiring a public swimming pool to remit late fees to DPHHS for failure to timely renew a license.
- MCA § 50-48-202 is waived as it relates to requiring a tattooing or body piercing establishment to remit late fees to DPHHS for failure to timely renew a license.
- To the extent that any other state statute or administrative rule would frustrate this Directive, strict adherence is hereby suspended during the emergency.

DPHHS shall continue to refund any late fees already collected pursuant to the above referenced statutes since the beginning of calendar year 2020.

Congregate Care:

Name-based background checks must be completed for all applicants to work at congregate care facilities and must be supplemented with fingerprint-based checks as soon as these services can be safely offered in all locations. To the extent there is a temporary shortage in physical fingerprinting services due to the emergency, and to accommodate staffing needs in congregate care facilities, DPHHS may temporarily waive licensing or certification requirements for congregate care facilities that require fingerprint background checks, provided that a name based background check is conducted and that a fingerprint check is done as soon as services become available. Accordingly, strict compliance with the following provisions is suspended for the duration of the emergency, but only to the limited extent they conflict with DPHHS's implementation of guidance, waivers, or rules by the Centers for Medicare and Medicaid Services (CMS), and the Administration for Children and Families pertaining to background checks of providers, employees, or applicants, and only to the extent necessary to respond to the emergency:

- MCA § 41-3-304, related to emergency foster placements; MCA § 52-2-622(4), and ARM 37.51.207 and 37.51.310, related to youth foster home license applications, but only to the extent there is a specific conflict with the purposes of this Directive.
- ARM 37.40.1018(7), related to self-directed community first choice services providers, but only to the extent there is a specific conflict with this Directive.

- ARM 37.97.132 and 37.97.140, related to the licensure of youth care facilities, but only to the extent there is a specific conflict with this Directive.
- ARM 37.100.138(1)-(2) and 37.100.165(5), related to community residences, but only to the extent there is a specific conflict with this Directive.
- Any other statute or administrative rule that would require fingerprint-based checks for the above-described congregate care providers, employees, or license applicants, but only to the extent there is a specific conflict with this Directive.

In order to reduce in-person interactions, DPHHS may waive training, and other training-related annual recertification requirements in congregate care facilities when these requirements cannot be met during the emergency. In-person training should be supplemented when it can be safely completed, and all care providers remain subject to competency requirements. Accordingly, strict compliance with the following provisions is suspended for the duration of the emergency to the limited extent they conflict with DPHHS's implementation of guidance, waivers, or rules by CMS pertaining to the response to the COVID-19 pandemic, but only to the extent necessary to respond to the emergency:

- MCA § 50-5-238, related to the licensure of intermediate care facilities for developmentally disabled persons, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of ARM Title 37, Chapter 34, related to services of the developmental disabilities program and the home and community-based services program, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of ARM Title 37, Chapter 40, related to home and community-based services for elderly and physically disabled persons, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of ARM Title 37, Chapter 97, related to the licensure of youth care facilities, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of ARM Title 37, Chapter 100, related to community residences, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of ARM Title 37, Chapter 106, related to the licensure of health care facilities, but only to the extent there is a specific conflict with the purposes of this Directive.

When illness or COVID-19 response makes compliance impossible, but care quality can be maintained, DPHHS may waive staffing-related licensing and certification requirements in congregate care facilities. Accordingly, strict compliance with the following provisions is suspended for the duration of the emergency to the limited extent they conflict with DPHHS's implementation of guidance, waivers, or rules by the Centers for Medicare and Medicaid Services pertaining to the response to the COVID-19 pandemic, but only to the extent necessary to respond to the emergency:

- MCA § 50-5-238 related to the licensure of intermediate care facilities for developmentally disabled persons, but only to the extent there is a specific conflict with this Directive.
- Provisions of ARM Title 37, Chapter 40, related to home and community-based services

for elderly and physically disabled persons, but only to the extent there is a specific conflict with this Directive.

- Provisions of Title 37, Chapter 90, ARM, related to the Home and Community-based Services Waiver for Adults with Severe Disabling Mental Illness, but only to the extent there is a specific conflict with this Directive.
- Provisions of Title 37, Chapter 97, ARM, related to the licensure of youth care facilities, but only to the extent there is a specific conflict with this Directive.
- Provisions of Title 37, Chapter 100, ARM, related to community residences, but only to the extent there is a specific conflict with this Directive.
- Provisions of Title 37, Chapter 106, ARM, related to the licensure of health care facilities, but only to the extent there is a specific conflict with this Directive.

Where quarantine or isolation considerations necessitate alternative settings and resident health, safety, and comfort will not be jeopardized, the Department may waive licensing and certification requirements related to permissible premises, settings, or construction standards in situations. Accordingly, strict compliance with the following provisions is suspended for the duration of the emergency to the limited extent they conflict with the Department's implementation of guidance, waivers, or rules by CMS pertaining to permissible premises, settings, or construction standards necessary to accommodate quarantine or isolation measures, and only to the extent necessary to respond to the emergency:

- MCA § 52-4-204 related to licensing of community homes for the physically disabled, and MCA § 50-5-238 related to the licensure of intermediate care facilities for developmentally disabled, but only to the extent there is a specific conflict with this Directive.
- Provisions of ARM Title 37, Chapter 97, related to the licensure of youth care facilities, but only to the extent there is a specific conflict with this Directive.
- Provisions of ARM Title 37, Chapter 100, related to community residences, but only to the extent there is a specific conflict with this Directive.
- Provisions of ARM Title 37, Chapter 106, related to the licensure of health care facilities, but only to the extent there is a specific conflict with this Directive.

Telehealth:
Pursuant to MCA § 33-22-138(6)(b), many types of licensed health care providers are eligible to deliver telemedicine services when clinically appropriate and medically necessary, including physicians, dentists, physical therapists, most types of licensed mental health professionals, pharmacists, advanced practice nurses, plus numerous others as listed in statute. Any of the professionals listed in statute may deliver telemedicine, if they are licensed to practice medicine in this state.

Health care professionals shall be allowed to perform health care services using all modes of telehealth, including video and audio, audio-only, or other electronic media, to treat the residents of the State of Montana for all medically necessary and appropriate services. Strict compliance with MCA §§ 33-22-138(6)(d), 37-3-102(14), 37-11-101(11), 37- 15-102(11), and 37-

15-201(1)(d), and ARM 24.156.802(4), 24.156.813, 24.189.301(16), 24.189.415, 24.222.907, 24.222.910, 24.222.913, and 24.222.920 is suspended to the limited extent that providers are not limited for the duration of the emergency to the use of any specific technologies to deliver telemedicine, telehealth, or telepractice services, and may provide such services using secure portal messaging, secure instant messaging, telephone conversations, or audio-visual conversations. However, providers must ensure that patients have the same rights to confidentiality and security as provided during traditional office visits. And providers must follow consent and patient protocol consistent with those followed during in-person visits

Strict adherence to the following requirements of board specific telehealth/telepractice/ telemedicine requirements for these practitioners is suspended to the extent that doing so is necessary in responding to the emergency:

- MCA § 37-3-102(14)(b), and ARM 24.156.813 (physicians);
- ARM 24.189.301(16) (psychologists);
- MCA §§ 37-15-102(11), 37-15-202(1)(d), and ARM 24.222.907; -.910; -.913; -.916; -.920 (speech language pathologists and audiologists).

To the extent that strict adherence to MCA § 33-22-138(6)(d)(ii)-(iii) conflicts with the purpose of services provided via telehealth during the emergency, it is suspended.

Pursuant to MCA § 33-22-138, a pre-existing provider/patient relationship is not required to provide telemedicine, telehealth, or telepractice services.

To the extent that ARM 24.101.417(2) would provide that volunteer health care professionals may not accept remuneration for services provided in responding to the emergency, it is suspended.

Insofar as the strict compliance with the following provisions require face-to-face interactions for medical services, they are suspended:

ARM 37.27.102(9)
ARM 37.27.902(2) and (3), to the extent that provider manuals require face-to-face interactions
ARM 37.27.517(1)(b)
ARM 37.34.3005(2), the extent the rates manual requires face-to-face interaction
ARM 37.40.702(8) and (9)
ARM 37.40.805(1) through (3), to the extent Medicare requires face-to-face encounters
ARM 37.40.1005(4), to the extent this requires in-person meetings
ARM 37.40.1114(4), to the extent this requires in-person meetings
ARM 37.86.901(2)
ARM 37.86.902(2)(b)
ARM 37.86.3405(2)
ARM 37.86.4402(1)
ARM 37.87.703(1)(h), to the extent that home support services require face-to-face

interactions
ARM 37.87.903(7), to the extent the provider manual requires face-to-face interaction
ARM 37.87.1401(3)(a), to the extent this limits reimbursement for telephone contacts that exceed the number of reimbursed face-to-face contacts in a four-week period
ARM 37.87.1402(5)
ARM 37.87.1410(6)(b)
ARM 37.88.101(2), to the extent the provider manual requires face-to-face interaction
ARM 37.89.501(2)
ARM 37.106.1916(5)
ARM 37.106.1935(4)
ARM 37.106.2011(3), to the extent this requires in-person, in-home meetings

The coverage for health care services delivered by telemedicine "must be equivalent to the coverage for services that are provided in person […]." MCA § 33-22-138. Telemedicine services, when medically and clinically appropriate, must be covered to the same extent and as if the health care provider and patient were physically present in the same room. Further:

- Reimbursement to the provider for those services should also be equivalent, as if the services were provided "in person."
- Health insurers must educate health care providers as soon as possible on appropriate Current Procedural Terminology (CPT) codes to be used to secure prompt, equivalent payment for telemedicine services.

Health insurers should continue to take steps to ensure their network is sufficient, as required by MCA § 33-22-1706 and ARM 6.6.5901–5908, to handle an increased demand for telemedicine and telehealth services, including making out-of-state in-network providers available to their insureds for telemedicine and telehealth services, if their in-state network cannot meet the demand. This may be particularly true for providing adequate access to behavioral health providers.

Health insurers and health care providers are likewise encouraged to take all necessary steps to avoid out- of-network and "surprise" bills for telemedicine and telehealth visits. "Out-of-network" health care providers who receive funding under the CARES Act Provider Relief Fund may not "balance bill" insured patients for services related to COVID-19 treatment. https://www.hhs.gov/provider-relief/index.html https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and conditions-04132020.pdf

Cost-sharing to the insured may be applied according to the terms of the contract. However, telemedicine and telehealth consultations relating to the testing for and diagnosis of COVID-19 virus must be covered without cost-sharing to the insured by providers of group health insurance and individual health insurance coverage (health insurers), as defined under MCA §§ 33-22-140(10), (11), and (14), section 2791 of the Public Health Service Act (42 U.S.C. § 300gg–91),[2] and the Families First Coronavirus Response Act, H.R. 6201, Pub. L. 116-27.

https://www.congress.gov/bill/116th- congress/house-bill/6201

Disclosures:
Emergency services providers are to be notified of contact with COVID-19 positive individuals. Strict compliance with the Montana Government Health Care Information Act (GHCI), MCA §§ 50-16-601–611, is suspended to the limited extent that health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may be disclosed to an emergency services provider who may be at risk of coming into contact with a person who tested positive for COVID-19. The GHCI allows for the release of healthcare information "to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases . . . " MCA § 50-16-603. Because this provision does not account for all varieties of professionals who might come into contact with individuals suffering from COVID-19 in an emergency services provider capacity, such notice is permissible when provided consistent with other laws.

Entities subject to the GHCI must remain aware that disclosures made pursuant to this Directive remain subject to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Privacy Rule (located at 45 CFR Part 160 and Subparts A and E of Part 164). Thus, HIPAA permits, for example, a covered county health department to disclose protected health information to a police officer or other person who may come into contact with a person who tested positive for COVID-19, for purposes of preventing or controlling the spread of the disease. *See* 45 CFR § 164.512(b)(1)(iv). However, that disclosure would still be subject the minimum necessary provisions of 45 CFR § 164.514 and other applicable requirements. For more information, please see: https://www.hhs.gov/sites/default/files/covid-19-hipaa-and-first-responders-508.pdf.

While conducting communicable disease investigations and notifying contacts, state and local public health officials will give priority to notifying emergency services providers of their potential exposure.

For the purposes of the federal Ryan White Act, SARS-CoV-2 (the virus causing COVID-19) has been added to the list of "Potentially Life-Threatening Infectious Diseases: Routinely Transmitted Through Aerosolized Droplet" by the Centers for Disease Control and Prevention. Section 2695 of the federal Ryan White Act (42 U.S.C. § 300ff-131) seeks: (1) to identify those potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies; and (2) describe the steps that medical facilities should follow to notify emergency services provider to allow for the timely diagnosis and post-exposure medical treatment of those exposures. For more information, please see: https://www.cdc.gov/niosh/docs/2020-119/pdfs/2020-119.pdf?id=10.26616/NIOSHPUB2020119.

Emergency services providers and healthcare facilities are encouraged to review the provisions

of MCA §§ 50-16-701–712, related to when an emergency services provider may request notification of exposure to an infectious disease, including an airborne infectious disease, following an exposure while attending to a patient prior or during transport or assisting in transporting a patient to a healthcare facility.

Strict compliance with provisions of Montana law related to Health Care Information Privacy Requirements for Providers Subject to HIPAA, including MCA §§ 50-16-805 and 50-16-811 is suspended to the limited extent that these provisions would conflict with or preclude disclosures allowed by the federal waiver of HIPAA authorities intended to provide flexibility during this emergency. To the extent that any other statute or administrative rule would preclude disclosures consistent with this Directive and allowed by federal law, including the recent federal waivers of the HIPAA Privacy Rule, strict compliance is hereby suspended.

Procurement Flexibility:
To the extent necessary to respond to the emergency, such as the procurement of additional patient space or necessary medical supplies, compliance with the following procurement authorities are temporarily waived:

- The Montana Procurement Act, Title 18, Chapter 4 of the Montana Code Annotated.
- MCA § 18-6-101, related to agency power to sell or dispose of state property.
- MCA § 2-17-101, related to agency leasing of property.
- Any provision of Title 2, Chapter 5 of the Administrative Rules of Montana related to state agency procurement.
- Any other statute or administrative rule to the extent that it would frustrate this directive.
- The above waivers do not apply to routine operations of state government, and any agency that proposes to engage in necessary, emergency-related procurement under this Directive must receive express approval from the Governor's Office or its agents.

As it pertains to patients suspected or confirmed to have been infected with COVID-19, strict compliance with the reporting requirements of ARM § 37.114.306 related to the transportation of communicable disease cases is waived.

- Transfer of a communicable disease case from one health care facility to another to meet that patient's care needs will require no notice or permission from a receiving county's local health officer.
- When a patient is discharged from a health care facility back into their home community, the sending jurisdiction should notify the receiving county's lead local health officer as soon as reasonably practicable.

Vaccine Administration:
As detailed in the HHS amendment and consistent with the requirements set forth therein, state licensed pharmacists may order and administer vaccines to children ages 3 through 18 years. Strict compliance with MCA § 37-7-105 is suspended to the extent that it conflicts with, or is preempted by, the federal HHS amendment to its Declaration under the Public Readiness and Emergency Preparedness Act.

EMPLOYMENT RELIEF

Unemployment Benefits:

To further the ability of Montanans to receive unemployment insurance benefits, ARM 24.11.478 shall remain in effect under Executive Order 2-2021.

Weekly Pay Requirements:

MCA § 18-2-423 is waived as it relates to payment of employees on a weekly basis by emergency medical transport contractors for the State Emergency Coordination Center.

INCARCERATION PROTOCOLS

The Montana Department of Corrections (DOC) shall continue to implement risk reduction protocols to address COVID-19 at its state-operated or state-contracted facilities, including the following:

- Screening all persons arriving at a facility in a manner consistent with CDC guidelines.
- Restricting all in-person visitations and continuing to provide, to the greatest extent possible, access to non-contact visitation methods. DOC shall continue offering one free video visit and one free phone call for each inmate per week for the duration of in-person visitation restrictions. DOC shall continue providing unmonitored call lines for legal communications and encouraging attorneys to limit in-person visits to essential visits only.
- Restricting off-site appointments for incarcerated individuals to those necessary to address an inmate's urgent or serious medical needs.
- Providing support to the Board of Pardons and Parole to consider early release for all of the following, but only so long as they do not pose a public safety risk and can have their medical and supervision needs adequately met in the community:
    - Inmates aged 65 or older;
    - Inmates with medical conditions that place them at high risk during this pandemic or who are otherwise medically frail;
    - Pregnant inmates; or
    - Inmates nearing their release date.
- Temporarily suspending all transfers into the DOC's custody except as authorized herein.
    - All transfers into the DOC's custody under this Directive shall be quarantined for a period of 14 days on arrival into DOC custody.
    - Before an in-state transfer, a county jail or other originating facility may request that the Director of the DOC determine that the jail or originating facility has satisfactorily implemented risk reduction protocols as outlined above. If the Director determines that risk reduction protocols were satisfactorily implemented, transfers will resume in accordance with this Directive but are still subject to the 14-day quarantine requirement.
    - Counties will continue to be reimbursed under existing reimbursement rates and protocols for these inmates. The statutory requirement to maintain county jail holds at a monthly average of 250 or less is suspended for this purpose only.

- Out-of-state transfers are only permitted on the express approval of the Director, are to be limited to the most pressing or severe cases, and must follow the 14- day quarantine requirement.
- The Director may suspend all transfers into DOC custody if capacity limitations prevent the ability to quarantine transfers.

- Urging local detention facilities to adopt appropriate screening and operational protocol as contained herein to prevent the introduction or spread of COVID-19 within their facilities and throughout the system.
- Implementing protocols for incarcerated persons who display symptoms of COVID-19, including appropriate testing and isolation protocols. DOC shall continue to work closely with DPHHS on these protocols.
- Providing, to the extent possible, appropriate personal protective equipment to staff as recommended by the CDC.
- Conducting necessary cleaning and disinfecting of facility surface areas.
- Ensuring access to personal hygiene products for incarcerated persons and correctional staff, including soap and water sufficient for regular handwashing. DOC will continue to educate staff and inmates on social distancing, handwashing, and personal hygiene.
- Offering educational and other programming to the greatest extent possible, while practicing social distancing protocol.
- Minimizing crowding, which may include scheduling additional mealtimes and recreational times, as staffing allows, to provide for increased social distancing.

Nothing in this Directive shall abridge the rights of victims of crime to be notified of or participate in release decisions.

DOC shall implement risk reduction protocols to address COVID-19 risks to offenders on community supervision and the probation and parole officers who supervise them. Conditions of supervision remain in full effect and offenders are required to comply with those conditions.

To the greatest extent possible, DOC shall reduce in-person contact to only those instances where public safety requires it and conduct other routine contacts via telephone or other means. Pre-Sentence Investigation interviews and risk and needs assessments shall be conducted telephonically. Statutory restrictions on the use of supervision fees to facilitate the purchase of the necessary equipment to further enable remote supervision are suspended. Where public safety requires physical contact with an individual on community supervision, DOC staff shall practice social distancing and hygiene, and use adequate PPE to the extent possible.

It is imperative for public safety that those re-entering communities from facilities obtain appropriate, adequate housing during this time where supportive social services are limited. Therefore, any statutory restrictions, as promulgated in ARM 20.13.108, on rental voucher funds are hereby suspended so as to allow additional discretion for these funds to be utilized for any housing-related expense, to ensure adequate re-entry housing.

Applicability: 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.

Authorities: Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Order 2-2021; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations: This Directive becomes effective February 12, 2021, and expires at the end of the declared state of emergency in Executive Order 2-2021.

This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.

If any provision of this Directive or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Directive, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Directive are declared to be severable.

Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor or any department, agency, political subdivision, officer, agent, or employee of the State of Montana, except as provided in this Directive or other Directives now in effect implementing Executive Order 2-2021.

This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.