OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: August 27, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020, waiving licensure renewal late fees for certain establishments, authorizing pharmacists to vaccinate children ages 3 and up, and permitting limited discretion to remove face coverings in classrooms in specified circumstances.

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

For the duration of a declared state of emergency, § 10-3-104(2)(a), MCA, authorizes the Governor to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Further, § 10-3-104(2)(c), MCA, authorizes the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area," and § 10-3-305(2), MCA, provides that "all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request."

Montana's public health laws also authorize the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor's direction, to "issue written orders for correction" of "conditions of public health importance," to "prevent and mitigate conditions of public health importance" through measures including "isolation and quarantine" and "abatement of public health nuisances." Section 50-1-202, MCA. The Department, under the Governor's direction, may also take action to correct public health deficiencies in "buildings or facilities where people congregate." Section 50-1-203, MCA.

COVID-19 is an easily transmissible, potentially fatal respiratory illness that has infected millions of Americans, hospitalized hundreds of thousands, and taken over 175,000 lives. The breadth of the toll COVID-19 has taken and continues to take on health and safety cannot be understated.

This Directive provides additional direction in three discrete areas necessary to respond to the emergency, as described below.

First, the pandemic has caused Montana businesses severe economic hardship. In response to the emergency, many businesses have temporarily shut down, and have suffered revenue declines as a result of both closures and social distancing measures necessary to curtail the spread of COVID-19. Montana law requires that certain businesses comply with licensure provisions and pay fees to DPHHS. These businesses include: (1) wholesale food establishments; (2) retail food establishments; (3) public accommodations (*e.g.*, hotels and motels); (4) tourist campgrounds and trailer courts; (5) public swimming pools; and (6) tattooing and body-piercing establishments. These businesses are

normally required to pay late fees if they do not timely renew their respective license. Sections 50-57-205; 50-50-205; 50-51-204; 50-52-202; 50-53-203; and 50-48-202, MCA. Due to efforts to reduce the spread of COVID-19, many of these businesses were unable to renew their licenses timely while temporarily closed. Businesses and DPHHS officials have requested that I waive late fees associated with these licensure renewals. I have determined that doing so will help alleviate economic hardship and is necessary for responding to the emergency. Accordingly, I find that strict compliance with the provisions of the statutes identified below would prevent, hinder, or delay necessary action in coping with the emergency presented by the COVID-19 pandemic.

Second, on August 19, 2020, the United States Department of Health and Human Services (HHS) announced an amendment to the Declaration under the Public Readiness and Emergency Preparedness Act authorizing state-licensed pharmacists to order and administer vaccines to individuals ages 3 through 18 years, preempting state laws to the contrary, subject to certain requirements. Pharmacists have requested that I confirm the preemption of state law that would otherwise limit their ability to administer vaccines in the way authorized by HHS.

Third, on August 12, 2020, I extended the July 15, 2020 Directive requiring face coverings in certain indoor and outdoor settings to include public and private K-12 schools. The August 12 Directive requires students and staff to wear face coverings in all areas of the school. School districts have requested limited flexibility in certain circumstances, which is provided for under the limited circumstances detailed below.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Section 4, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following, effective immediately:

I. Late Fees Associated with Licensure Renewal for Certain Establishments

- Certain late fees associated with licensure renewals administered by DPHHS are waived for the duration of the emergency.
    - Section 50-57-205, MCA, 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 the limited purposes of this Directive.
    - Section 50-50-205, MCA, is waived as it relates to requiring a retail food establishment to remit late fees to DPHHS for failure to timely renew a license.
    - Section 50-51-204, MCA, 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.
    - Section 50-52-202, MCA, 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.
    - Section 50-53-203, MCA, is waived as it relates to requiring a public swimming pool to remit late fees to DPHHS for failure to timely renew a license.
    - Section 50-48-202, MCA, 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 the limited purposes of this Directive, strict adherence is hereby suspended during the emergency.

- I further direct that DPHHS refund any late fees already collected pursuant to the above-referenced statutes since the beginning of calendar year 2020.

II. Vaccinations for Children Aged Three and Up

- 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.[1]
    - Strict compliance with § 37-7-105, MCA, is suspended for the duration of the declared state of emergency 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.

III. Face Coverings in Classrooms

- To provide schools with a measure of flexibility, the August 12, 2020 Directive requiring face coverings in certain school settings is modified. School districts, at their local discretion, may make a narrow allowance for students to remove their face coverings while seated and in a classroom, but only where proper social distancing of six feet is both possible and strictly observed. In all other school settings, face coverings are required unless an exception from the July 15 Directive applies (*e.g.*, consuming food, strenuous physical activity, etc.). This only applies in counties where there are four or more active cases, as provided in the August 12, 2020 Directive.
    - The flexibility described here applies only to classrooms where social distancing can occur and when children are seated at their desks. If a teacher is working one-on-one with a student, both teacher and student must wear a face covering. If students are working in small groups, they must be wearing face coverings.

Authorities: Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; §§ 10-3-103, -104, -302, and -305, MCA; §§ 50-1-202, -203, and -204, MCA; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the emergency.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- 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 Orders 2-2020 and 3-2020.
- 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.
- 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,

[1] Requirements for vaccine administration consistent with the amendment are available on HHS's website here: https://www.hhs.gov/about/news/2020/08/19/hhs-expands-access-childhood-vaccines-during-covid-19-pandemic.html.

its departments, agencies, or entities, its officers, employees, or agents, or any other person.