State of Utah

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State Public Health Order
2021-5
Updated Statewide COVID-19 Restrictions

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 has and continues to spread and cause serious illness and death to Utah residents, threatening public health and wellness throughout the state;

WHEREAS, Utah Code § 26-1-30(3) requires and authorizes the Utah Department of Health (the "Department") to promote and protect the health and wellness of the people within the state;

WHEREAS, Utah Code §§ 26-1-30(5) and 26-6-3 require and authorize the Department to investigate and control the causes of epidemic, infectious, communicable and other diseases affecting the public health;

WHEREAS, Utah Code §§ 26-1-30(6) and 26-6-3 require and authorize the Department to prevent and control communicable infectious, acute, chronic, or any other disease or health hazard that the Department considers to be dangerous, important, or likely to affect the public health;

WHEREAS, Utah Code § 26-1-10 authorizes the executive director of the Department to issue public health orders to enforce state laws, including Utah Code §§ 26-1-30 and 26-6-3;

WHEREAS, to prevent and control the causes of COVID-19 throughout the state, the Department has established minimum standards to address the unique circumstances in different locations in Utah;

WHEREAS, the number of COVID-19 cases in Utah remains high and hospital ICU capacity and resources are strained;

WHEREAS, the Centers for Disease Control and Prevention (CDC) has called on Americans to wear face coverings, with the CDC director stating that "[c]loth face coverings are one of the most powerful weapons we have to slow and stop the spread of the virus—particularly when used universally within a community setting," and that "[a]ll Americans have a responsibility to protect themselves, their families, and their communities";

WHEREAS, analysis by Brigham Young University researchers reviewing more than 115 studies on the effectiveness of masks in controlling COVID-19 found "[t]here is clear evidence that face coverings reduce the spray of droplets produced during speaking, coughing, and sneezing" and that "masks could be one of the most powerful and cost-effective tools to stop COVID-19 and accelerate the economic recovery";

WHEREAS, published scientific research has shown that properly wearing a face mask can reduce the risk of viral spread and exposure up to 80%;

WHEREAS, the CDC has found that it is critical for schools to open as safely and as soon as possible, and remain open, to achieve the benefits of in-person learning and key support services;

WHEREAS, transmission rates for school-aged children in close contact, such as occurs in school or with participation in sports, can range from 20% to over 50%;

WHEREAS a growing number of studies in school settings with universal mask use have shown transmission rates of COVID-19 can be reduced to as low as 1% to 2%, while keeping schools open to in-person instruction;

WHEREAS, students and staff should be allowed to participate in in-person learning as safely as possible while lessening the burden of quarantine and multiple soft closures on students and their families, teachers, and school administrators.

Based on the foregoing, in accordance with the authority vested in me as the Executive Director of the Utah Department of Health by Utah Code §§ 26-1-10, 26-1-30, and 26-6-3, and being fully advised and finding the factual basis and legal requirements have been established;

NOW, THEREFORE, I, Richard Saunders, Executive Director of the Utah Department of Health, hereby order the following:

1. **Definitions.** As used in this Order:
    a. "COVID-19" means Novel Coronavirus Disease 2019 caused by Severe Acute Respiratory Syndrome Coronavirus 2, also known as SARS-CoV-2.
    b. "COVID-19 test" means a test authorized by the United States Food and Drug Administration as a diagnostic test to determine current COVID-19 infection.
    c. "Covered institution of higher education" means:
        i. a public degree-granting institution and technical college identified in Utah Code § 53B-1-102(1)(a) or (b); and
        ii. a private degree-granting institution of higher education that has more than 10,000 enrolled students residing in Utah.
    d. "Department" means the Department of Health created in Utah Code § 26-1-8.
    e. "Event host" means a person that owns, operates, provides facilities for, or has formal oversight over any of the following where a social gathering occurs: an amusement or water park, arena, aquarium, aviary, botanical garden, ceremony, cinema, comedy club, commercial event venue, commercial party venue, concert or concert hall, conference, convention or convention center, dance or dance hall, driver's education training, fair or fairground, museum, organized athletic or sporting event, recital, stadium, theater, or zoo.
    f. "Extracurricular activity" means an activity, a course, or a program that is:
        i. not directly related to delivering instruction;
        ii. not a curricular activity or co-curricular activity as those terms are defined in Utah Code § 53G-7-501; and
        iii. provided, sponsored, or supported by a school or a public or private institution of higher education, including a degree-granting institution and a technical college.
    g. "Face mask" means a mask that completely covers the nose and mouth, is made of synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin. "Face mask" does not include a mask with an exhalation valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.
    h. "Face shield" means a shield that covers the entire face—including the eyes, nostrils, and mouth of the wearer—is made of clear plastic or similar nonpermeable transparent material, and can be used in conjunction with a face mask for enhanced protection.
    i. "Household" means an individual or a group of individuals who reside in the same residence.

j. "Local Education Agency" or "LEA" means a school district or a charter school.
k. "Party" means a group of individuals gathered for a specific purpose who choose to be within 6 feet of one another
l. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).
m. "Public setting" means any area, whether inside or outside a building or other enclosure, that is not a private residence or vehicle, and is open for simultaneous use by two or more individuals not of the same household for business, education, recreation, transportation, or similar purposes, including a "public place" as defined in Utah Code § 76-9-102 and a "place of public accommodation" as defined in Utah Code § 13-7-2(3) and 42 U.S.C. § 12181.
n. "School" means an LEA or private school that provides any kindergarten through grade-12 program or service, including a residential treatment center that provides any kindergarten through grade-12 program or service.
o. "School staff member" means any individual who is employed by the LEA and works on the premises of the school hosting the testing event.
p. "Social gathering" means an in-person gathering of individuals from separate households. "Social gathering" does not include:
    i. a gathering at a residence for a non-commercial purpose;
    ii. a gathering for a primarily educational or religious purpose;
    iii. a business service provided at a residence;
    iv. a physical custody exchange of a child or the exercise of parent-time pursuant to Utah Code § 30-3-32; or
    v. a childcare service, including a daycare, nanny, or babysitting service, regardless of whether the childcare service is provided as part of a financial transaction.
q. "Testing event" means COVID-19 testing of all students conducted by a school within a two day period in order to continue in-person learning when the outbreak threshold is met.

2. **Transmission area determination.** The Department shall announce each county's transmission area designation on a weekly basis as provided in this Section (2) and provide notice of transmission area designations on the Department's website. The Department may not lower a county's transmission area designation until 14 days after the date of the county's last transmission area designation.
    a. *Low Transmission Area.* A county is a Low Transmission Area if at least two of the following conditions are met:
        i. The county's seven-day average positivity rate for COVID-19 tests is less than 5.1%.
        ii. The county's 14-day case rate is less than 101 per 100,000 people.

iii. The statewide seven-day average intensive care unit bed utilization is less than 69% and the statewide seven-day average COVID-19 ICU utilization rate is less than 6%.

b. *Moderate Transmission Area.* A county is a Moderate Transmission Area if at least two of the following conditions are met:
   i. The county's seven-day average positivity rate for COVID-19 tests is at least 5.1% and is less than 10%.
   ii. The county's seven-day case rate is at least 101 per 100,000 people and is less than 325 per 100,000 people.
   iii. The statewide seven-day average intensive care unit bed utilization is at least 69% and is less than 72% and the statewide seven-day average COVID-19 ICU utilization rate is at least 6% and is less than 15%.

c. *High Transmission Area.* A county is a High Transmission Area if at least two of the following conditions are met:
   i. The county's seven-day average positivity rate for COVID-19 tests equals or exceeds 10%.
   ii. The county's 14-day case rate equals or exceeds 325 per 100,000 people.
   iii. The statewide seven-day average intensive care unit bed utilization is or exceeds 72% and the statewide seven-day average COVID-19 ICU utilization rate equals or exceeds 15%.

3. **Restrictions on individuals.**
   a. Except as provided in Subsection (3)(b), regardless of a county's transmission index designation, an individual shall:
      i. wear a face mask while in an indoor public setting;
      ii. wear a face mask while in an outdoor public setting and within six feet of any individual from a separate party; and
      iii. comply with any face mask or physical distancing requirements required by an event host or business pursuant to Sections (4) or (5).
   b. Subsections (3)(a)(i) and (ii) do not apply in a Low Transmission Area beginning eight weeks after the date on which the Department provides notice that 1,633,000 prime doses of a COVID-19 vaccine have been allocated to the state.
4. **Restrictions on event hosts.**
   a. *Statewide restrictions.* Regardless of a county's transmission index designation, an event host of a social gathering shall:
      i. complete and implement the Event Management Template provided by the Department;
      ii. require each individual attending the social gathering to wear a face mask, including in an area of ingress or egress; and

iii. post conspicuous signage at the social gathering that:
A. lists COVID-19 symptoms;
B. asks individuals experiencing COVID-19 symptoms to stay home; and
C. provides notice of face mask and physical distancing requirements.

b. *Moderate Transmission Area restrictions.* An event host of a social gathering in a county designated as a Moderate Transmission Area shall:
i. on the day of the social gathering, require each attendee to confirm that the attendee:
A. is not subject to isolation or quarantine requirements; and
B. is not experiencing any symptom of COVID-19; and
ii. require an attendee who removes the attendee's face mask to eat or drink to maintain six feet physical distance from any individual from a separate party; and
iii. within 24 hours of receiving notice that an attendee of the social gathering tested positive for COVID-19, notify each attendee who was within six feet of the positive case for more than 15 minutes cumulatively.

c. *High Transmission Area restrictions*. An event host of a social gathering in a county designated as a High Transmission Area shall:
i. on the day of the social gathering, require each attendee to confirm that the attendee:
A. is not subject to isolation or quarantine requirements; and
B. is not experiencing any symptom of COVID-19; and
ii. require at least six feet of physical distance between individuals from separate parties who attend the social gathering, including in an area of ingress or egress, unless the event host receives a waiver of this requirement pursuant to Section (9).
iii. within 24 hours of receiving notice that an attendee of the social gathering tested positive for COVID-19, notify each attendee who was within six feet of the positive case for more than 15 minutes cumulatively.

5. **Restrictions on businesses.** The following restrictions apply to a business, including a bar or restaurant, regardless of whether the business is acting as an event host:
a. *Statewide restrictions.* Regardless of a county's transmission area designation, a business shall:
i. require each employee and contractor to wear a face mask while at work;
ii. post conspicuous signage at each entrance to the business that:
A. lists COVID-19 symptoms;

B. asks employees and patrons experiencing COVID-19 symptoms to stay home;
C. provides notice of face mask and physical distancing requirements; and

iii. require any individual who removes their face mask to eat or drink on the premises of the business, to remain in place while eating or drinking.

b. *High Transmission Area restrictions.* The following restrictions apply in a county designated as a High Transmission Area:
   i. Except as provided in Subsection (5)(d), a business, including a restaurant or bar, shall require each patron to maintain at least six feet of physical distance from any patron from a separate party, including in an area of ingress or egress.

c. *Moderate Transmission Area restrictions.* The following restrictions apply in a county designated as a Moderate Transmission Area:
   i. A restaurant shall require at least six feet of physical distance between each party in a waiting area.
   ii. A bar shall require each patron to wear a face mask when within six feet of any individual from a separate party.

d. *Exceptions to physical distancing requirements.* Notwithstanding Subsection (5)(b)(i), a business that provides a childcare service may permit a child, parent, or care provider to be within six feet of another child, parent, or care provider while in the course of providing or receiving the childcare service.

6. **Restrictions on organized sports and activities.**
   a. *High school athletic and extracurricular social gatherings.* A person may not be an event host for, or participate in, a high-school-sponsored social gathering that is an athletic or extracurricular activity, including a competition or practice, unless:
      i. the high school verifies that each participant of a recurring extracurricular activity received a COVID-19 test within the 14 days immediately prior to the athletic or extracurricular activity;
      ii. the high school verifies that each participant of a single occurring extracurricular activity, including a school social dance, received a COVID-19 test within 48 hours immediately prior to the activity; and
      iii. immediately prior to participating in the athletic or extracurricular activity, each participant confirms that the participant:
         A. has completed any quarantine or isolation period required by the COVID-19 School Manual provided by the Department; and
         B. is not experiencing any symptom of COVID-19.

b. *Other athletic and extracurricular activities.* A person may not be an event host for, or participate in, a social gathering that is an athletic or extracurricular activity not covered by Subsection (6)(a), including a club sport and college or university intramural activity, but not including intercollegiate athletics, unless immediately prior to participating in the athletic or extracurricular activity, each participant confirms that the participant:
    i. has completed any quarantine or isolation period; and
    ii. is not experiencing any symptom of COVID-19.
c. *Event host exception.* Notwithstanding Subsection (4)(b), an event host of a social gathering that is an athletic or extracurricular activity authorized under Section (6) is not required to require six feet physical distance between each participant. A participant does not include a spectator.

7. **Restrictions on institutions of higher education.**
    a. For the purposes of this Order, an institution of higher education, including a public or private degree-granting institution or technical college, is considered to be a business subject to Section (5). An institution of higher education is not subject to Section (5)(b)(i).
    b. A covered institution of higher education shall test enrolled students age 18 years or older who live in on-campus housing or attend at least one course that involves in-person instruction provided by the institution of higher education to identify students with current COVID-19 infection and determine campus COVID-19 infection trends in accordance with the intensive testing plan developed by the Utah System of Higher Education and approved by the Utah Department of Health.
8. **Face mask exceptions.**
    a. Notwithstanding any other provision of this Order, an individual required to wear a face mask may remove the face mask in the following situations:
        i. while actively eating or drinking, provided that the individual remains in place while eating or drinking;
        ii. while alone or only with other members of the same household in a room, cubicle, vehicle, or similar enclosure;
        iii. when communicating with an individual who is deaf or hard of hearing if:
            A. communication cannot be achieved through other means; and
            B. the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;
        iv. while obtaining or providing a service that requires the temporary removal of the face mask, such as dental services or speech therapy services;
        v. while sleeping;

vi. while actively performing as an athlete at an organized athletic event authorized under Section (6);
vii. while exercising or engaging in athletic training while:
A. outdoors; or
B. indoors and maintaining at least six feet of physical distance from any other individual from a separate party;
viii. while swimming or on duty as a lifeguard;
ix. while giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation or performance for an audience;
x. when engaging in work where wearing a face mask would create a risk to the individual, as determined by government safety guidelines;
xi. when necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution; and
xii. when federal or state law or regulations prohibit wearing a face mask.

b. The following individuals are exempt from the face mask requirements of this Order:
i. a child who is younger than three years old;
ii. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance;
iii. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask; and
iv. an individual who is incarcerated.

9. **Event host physical distancing waivers.**
a. A county executive, in consultation with the local health department, may:
i. grant a waiver to an event host from the requirement of Subsection (4)(b); and
ii. review the waiver every 14 days from the date the waiver was granted, and revoke the waiver if the county executive finds it necessary to protect public health.
b. When considering whether to grant or revoke a waiver pursuant to Subsection (9)(a), the county executive shall consider:
i. the petitioner's ability to demonstrate safe operations as outlined in the COVID-19 Business Manual provided by the Department; and
ii. any evidence of significant COVID-19 transmission arising directly from an event held by the event host.

10. **Local education agency requirements.**
a. An LEA is not subject to Sections (4) and (5).

b. At least one time per school year but not more than once per term, an LEA shall obtain parental or guardian permission to test a student as required by Sections (6) and (10). A parent or guardian may rescind permission or grant permission at any time during the school year.
c. If an LEA meets an outbreak threshold described in Subsection (10)(d), the LEA shall consult with its local health department and:
    i. conduct a testing event if the LEA and local health department determine that a testing event is appropriate; or
    ii. consistent with Subsection 10(e), take other actions decided upon by the LEA to mitigate the spread of COVID-19 consistent with public health guidance.
d. An LEA meets an outbreak threshold when:
    i. one percent of a school's students and staff test positive for COVID-19 within a rolling 14 day window, for a school with more than 1,500 students and school staff members; or
    ii. fifteen of a school's students or staff members test positive for COVID-19 within a rolling 14 day window, for a school with 1,500 or fewer students and school staff members.
e. An LEA may require a student to participate in virtual or remote learning due to COVID-19 only as provided in Subsection (10)(f)(ii) and (iii).
f. *Students*.
    i. A student who tests positive for COVID-19 shall isolate in accordance with the local health department direction for 10 days from the test date.
    ii. An LEA shall require a student under isolation pursuant to Subsection (10)(f)(i) to participate in virtual or remote learning.
    iii. An LEA shall require a student to participate in virtual or remote learning if the student does not or is unable to participate in testing of any kind, and:
        A. less than 60% of students participate in a testing event; or
        B. the resulting percent positivity from those who participated in the testing event is equal to or greater than 2.5%.
    iv. Notwithstanding Subsection (10)(f)(iii), a student with special healthcare needs who is unable to participate in testing because of chronic physical, mental, or behavioral limitations or is unable to use a different type of test, shall be allowed to attend school in person upon request of the student's parent or guardian.
g. *School Staff Members.*

i. A school staff member who tests positive for COVID-19 shall isolate in accordance with the local health department direction for 10 days from the test date.
ii. A school staff member who is exposed to COVID-19 shall follow quarantine guidelines.
iii. School staff members may participate in a testing event
iv. An LEA may not prohibit a school staff member from performing in-person job duties based upon the school staff member's non-participation in a testing event or negative COVID-19 test result.

h. An LEA shall comply with the requirements of the "Planning Requirements and Recommendations for K-12 School Reopening," created by the Utah State Board of Education.

11. **Gatherings at residences.** This Order does not apply to a gathering of individuals at a residence for a non-commercial purpose.
12. **Religious services.** This Order does not apply to a religious service. Faith-based organizations are strongly encouraged to implement protocols to mitigate the spread of COVID-19.
13. **Effect on other laws.**
    a. Nothing in this Order may be construed to prohibit a local health department from issuing a health order that is more stringent than this Order.
    b. To the extent that this Order conflicts with a provision of State Public Health Order 2021-2, this State Public Health Order 2021-2 shall control.
14. **Severability.** If a provision of this Order or the application of a provision to any person or circumstance is held invalid, the remainder of this Order shall be given effect without the invalid provision or application. The provisions of this Order are severable.

This Order is effective February 23, 2021, and shall remain in effect through March 25, 2021, unless otherwise modified, amended, rescinded, or superseded.

Made at 7:00 p.m. the 22nd day of February, 2021

Richard G. Saunders
Executive Director
Utah Department of Health