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: June 18, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020, modifying certain measures related to the provision and regulation of medical marijuana and updating Appendix B related to pools.

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.

During a declared state of emergency, the Governor has authority 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." Section 10-3-104(2)(a), MCA. Moreover, the Department of Public Health and Human Services ("Department" or "DPHHS") may "issue written orders for correction, destruction, or removal" of "conditions of public health importance." Section 50-1-202(1)(b), MCA. A condition of public health importance includes any "disease . . . that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community." Section 50-1-101(2), MCA.

On April 1, 2020, I issued a Directive implementing various measures for reducing the risk of COVID-19 exposure for Montana Medical Marijuana Program cardholders, including a moratorium on issuing new provider licenses and limiting DPHHS inspections to complaints of violations that would immediately impact public health, welfare, or safety. These measures were also consistent with the March 26, 2020 Stay At Home Directive then in effect.

Since those Directives were issued, Montana's success in improving and maintaining testing capability, preventing the healthcare system from being overwhelmed, and maintaining one of the lowest infection rates in the United States has allowed Montana to progress on a phased reopening. Per the May 19, 2020 Directive, Montana is now in Phase II of the reopening. Just as restrictions have been lessened for travel and other businesses, it is now appropriate to eliminate most of the restrictions contained in the April 1, 2020 Directive. The provision permitting curbside delivery of medical marijuana, however, remains necessary to respond to the emergency by allowing medically-vulnerable patients to minimize close contact with others and reduce their risk of infection.

Additionally, Senate Bill 265, signed May 3, 2019, requires the Department to "untether" patients and providers on or before July 1, 2020. To comply with this deadline, the Department needs additional discretion to approve new provider licenses and to conduct inspections.

As Montana has progressed through Phase II of the reopening plan, it has also become necessary to modify some of the guidelines for businesses that have now reopened. Accordingly, attached to this Directive is a superseding Appendix B that updates the May 19, 2020 Phase II Directive.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, 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 measures be in place in the State of Montana, effective immediately:

- The April 1, 2020 Directive implementing Executive Orders 2-2020 and 3-2020 and providing measures related to the provision and regulation of medical marijuana is rescinded, except for the following provision that will remain in effect:
    - Curbside pickup for certain patients is still permissible.
    - To this end, strict compliance with ARM §§ 37.107.124 and 37.107.118(18)(b) is hereby suspended for the duration of the emergency to the extent that licensed providers and their staff may hand-deliver medical marijuana items from a dispensary registered premises to a cardholder in a vehicle when parked immediately outside.

- The updated Appendix B attached to this Directive supersedes the Appendix B to the May 19, 2020 Phase II Directive, and provides updated and superseding guidance related to pools.

- No other Directive is amended, rescinded, or superseded except as expressly provided in herein.

Authorities: Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- 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 expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- 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.

Updated Guidelines for All Licensed Pools in Phase 2

All licensed spas and pools in Montana (*e.g.*, public swimming pools, public accommodation pools, gym pools, spas, hot springs, waterparks, competition pools, etc.) must follow the guidelines for the duration of Phase 2.

Facilities may operate at a maximum of 75 percent capacity, and must employ sanitization and social distancing requirements as detailed herein.

Healthy Behaviors

- Encourage all staff and patrons to wash their hands often and to cover coughs and sneezes.
- Encourage the use of cloth face coverings when unable to practice social distancing.
    - Do not, however, wear cloth face coverings when in water or humid environments as it can make breathing difficult.
- Educate staff and patrons on the symptoms of COVID-19.
- Post signs with the following, or substantially similar, language at all entrances to the facility.
    - "People with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility."
    - "Observe social distancing in this facility. No loitering in common areas."
- Ensure adequate amounts of soap, hand sanitizer, paper towels, tissues, and no-touch trash cans are available.

Healthy Environment

- Clean and disinfect frequently touched surfaces at least daily and shared objects each time they are used.
- Determine which disinfectant will work best for your facility. Some surfaces can be damaged by harsh cleaning chemicals.
    - List N disinfectants approved by the U.S. Environmental Protection Agency.
    - Pool water is not an approved sanitizer or disinfectant.
- Develop procedures to identify and separate used furniture and equipment from clean. Examples include:
    - Labeled bins for used pools toys and floats that need to be disinfected before use by another person.
    - A monitoring system for deck furniture to clean between users.
- Ensure safe and correct use and storage of all disinfectants.

- Ensure indoor ventilation systems are operating efficiently and providing adequate air exchange.
- Increase circulation of outdoor air as much as possible.
- Survey facility water systems to ensure they are safe. Long shutdowns could require taking steps to minimize the risk of Legionnaires' disease.
- Use physical barriers or visible cues to provide areas that facilitate a 6-foot separation between patrons. Examples include:
    - Lane markers or floating lane lines to separate pool areas.
    - Separation of deck tables and lounge chairs.
    - Tape on the deck and sidewalks to designate waiting areas or staging zones.
    - Marks on stairs and walkways with directional arrows for incoming and outgoing traffic.
- Monitor use of shared community spaces like locker rooms to avoid crowding and facilitate separation.
- Discourage the sharing of items such as food, equipment and toys that cannot easily be disinfected between users.

Healthy Operations

- Front desk/gate attendant must track occupancy, incoming, and outgoing to ensure maximum occupancy does not exceed 75 percent of capacity.
- Patrons must observe social distancing requirements. This includes:
    - 6-foot spacing between unassociated patrons (*i.e.* not family members).
    - For groups larger than 50, local health department should be consulted on plans to maintain social distancing.
- The facility must reduce its total occupancy if it is not possible to observe these social distancing requirements.
- Educate staff on the symptoms of COVID-19 and advise them to stay home when ill.
- Conduct health assessments of all staff as they come on shift.
- Lifeguards that are actively lifeguarding must not be expected to monitor handwashing, the use of cloth face coverings, or others' adherence to social distancing requirements.
- Follow certification agency recommendations for lifeguard rescues, and first aid during the pandemic.
- Youth swim classes:
    - Group size no larger than 50 swimmers.
    - Social distancing facilitated between groups, during classes, drop off, and pickup.

For additional guidance, see the CDC's document: Considerations for Public Pools, Hot Tubs, and Water Playgrounds During COVID-19

Guidance for gyms and fitness studios

All gyms and fitness studios must follow these basic guidelines. Facilities may operate at a maximum 75 percent capacity, and must employ sanitization and social distancing requirements as follows below. In the event a confirmed COVID-19 case is associated with a facility, the facility should be thoroughly cleaned in accordance with the CDC's facility environmental cleaning procedures for workout areas, seating, locker rooms, and other areas of the establishment frequented by patrons.

- Facility must have a dedicated staff available during operating hours to wipe down frequently touched areas on a regular basis and monitor gyms zones to ensure that users are wiping down equipment properly.
- Train workers on symptom awareness and proper handwashing technique.
- Signage must be posted with the following or substantially similar wording:
    - "Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using the gym."
    - Signs shall be positioned for effective visual observation by gym guests, such as at the front desk and in locker rooms.
- Front desk should track occupancy to ensure facilities stay at or below 75 percent capacity.
- Hand sanitizer must be made available at front desk and at stations throughout the workout area.
- Approved sanitizer for cleaning equipment after use must be provided at stations throughout the workout areas along with disposable towels. Reusable towels shall not be used to clean equipment.
- Post signs throughout workout area reminding patrons to wipe equipment after each use.
- Masks should be worn by all staff.
- Guests are encouraged to wear masks when possible.
- Six-foot distance should be maintained between each equipment user. Cardio studios should limit guests to every other piece of equipment to achieve this.
- Guest using free weights shall maintain six feet of separation, except when a spotter is necessary. In this instance, workout groups shall be limited to two people.
- Sitting areas must be closed.

- Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.
- Social distancing must be maintained in dressing rooms and other common areas. No congregating in these areas may be allowed.
- After closing, establishments must clean using an EPA approved disinfectant. Twenty-four-hour establishments must close from 11:30 pm to 12am so that proper disinfection can happen.
    - Facility must develop a checklist to ensure that no equipment is being missed during disinfection. Checklist should include large items, such as treadmills and smaller items, such as weights and bands.
- Frequently touched surfaces must be cleaned and sanitized regularly throughout the day and disinfected each night after closing.
- Personal training sessions may be offered with strict adherence to social distancing guidelines and masks are encouraged to be used by the trainer and trainee.
- Indoor group classes may be offered, provided that social distancing can be maintained.
- Additional time between group classes must be provided so that a designated gym employee can disinfect any equipment and other cleanable surfaces before the next class begins.

Guidance for places of assembly, i.e. indoor and outdoor concert venues, bowling alleys, etc.

In the event a confirmed COVID-19 case is associated with a facility the facility should clean in accordance with CDC's facility environmental cleaning procedures for areas of the establishment frequented by patrons.

- Maximum number of attendees is 75 percent of normal capacity while maintaining 6 feet between non-family member groups.

- Signage must be posted with the following or substantially similar wording:

    - "Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility."

    - Signs shall be positioned for effective visual observation by patrons, such as on the entry way door.

- Increase cleaning and sanitizing of frequently touched surfaces, including door handles, chairs and tables.

- Keep social distancing of at least 6 feet between non-family member groups or immediate party.

- Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.

- Facilities should try to control customer flow in a manner that maximizes social distancing such as signage or ropes and directing flow in one direction.

- Provide hand sanitizer or hand washing stations throughout the venue whenever possible.

- Each venue should create and implement a written COVID-19 response plan.

- Increase cleaning and sanitizing of restrooms to no less than every two hours whenever possible.

- Provide clear plastic shielding between workers and attendees whenever possible, such as event cashiers and food vendors.

- If possible do not use tables. Tables should be covered with single-use material and discarded between users, showings, performances or every two hours, whichever provides maximum spread protection.

- Train workers on COVID-19 symptom awareness and proper handwashing procedures.

- Gift shops should limit entry to 75 percent capacity and clean commonly touched surfaces frequently.

Additional measures that apply to theaters (live and movie)

- Increase cleaning time period between events, performances and showings. Ensure that commonly touched surfaces such as arm rests and railings are cleaned frequently.

- Ushers should monitor and enforce social distancing practices in theaters and encourage additional distance between guests as appropriate.

    - Ushers should limit the number of people in lines to no less than 6 feet between families or immediate party.