

ARIZONA DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEASURE 2020-02
(Slowing the Spread of COVID-19: Phased Reopening)

WHEREAS, the World Health Organization officially declared a pandemic due to COVID-19 on March 11, 2020; and

WHEREAS, the Governor of the State of Arizona, in response to the COVID-19 pandemic issued a Declaration of Emergency on March 11, 2020, authorizing the Director of the Arizona Department of Health Services ("Director") to coordinate all matters pertaining to the public health emergency response of the State in accordance with Arizona Revised Statutes ("A.R.S.") Title 36, Chapter 6, Article 9; and

WHEREAS, as of August 10, 2020, there have been 187,523 diagnosed cases of COVID-19 in Arizona including 4,154 deaths, and the State continues to see increased numbers; and

WHEREAS, data has shown that community spread continues and is greatest among the demographic of 20-44 year olds; and

WHEREAS, mitigation measures need to be sustained to ensure continued containment, protect public health and safety and mitigate the strain on Arizona's healthcare systems; and

WHEREAS, indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars, because of the nature of their function and the demographics of those who patronize them (20-44 year olds), pose a particular threat to Arizona's ability to prevent and control the spread of COVID-19; and

WHEREAS, on June 29, 2020, the Governor of the State of Arizona issued Executive Order 2020-43, pursuant to which indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars were required to pause operations (i.e., close) effective at 8:00 p.m. on Monday June 29, 2020, and remain closed until at least July 27, 2020; and

WHEREAS, on July 23, 2020, the Governor of the State of Arizona issued Executive Order 2020-52, pursuant to which the pause in operations for indoor gyms and fitness clubs or centers, indoor movie theatres, water parks and tubing operators, and bars required under of Executive Order 2020-43, was ordered to be extended, remain in place, and continue to be reviewed for repeal or revision every two weeks; and

WHEREAS, although mask mandates, limitations on group gatherings, and closure of certain business are resulting in improvements slowing the growth in numbers of cases, Arizona remains at a pivotal stage in its battle with COVID-19 and these measures need to continue due to the continued high rates of hospitalizations and high numbers of cases; and

WHEREAS, the Governor and the Director, based on guidance and recommendations from federal public health experts, do not believe it is currently safe for certain businesses to resume normal (pre-COVID-19) operations; and

WHEREAS, on August 4, 2020, the Honorable Timothy J. Thomason, in Maricopa County Superior Court Case No. CV2020-093916, ruled that indoor gyms and fitness clubs or centers must be provided an opportunity to apply for reopening and the process for reopening must be implemented no later than August 11, 2020 ("Ruling"); and

WHEREAS, in the Ruling, the Honorable Timothy J. Thomason, held: "[i]t is not the Court's function to dictate how this process will be structured or implemented;" "[t]he process that the Court is ruling must be provided during the shutdown period certainly does not have to result in automatic reopening;" "[i]t would be appropriate for the Governor or ADHS to have some discretion in dealing with applications to reopen;" "[t]he Court is not in a position to dictate how quickly the process moves along;" and "ADHS certainly has the discretion to deny individual applications"; and

WHEREAS, the Governor and the Director have determined that the process ordered in the Ruling also should be applied to the paused operations of indoor theaters, waters parks and tubing operators, and bars; and

WHEREAS, the Director, pursuant to the Declaration of Emergency and as authorized by A.R.S §§ 26-307(A) and 36-787(A), may make, amend, and rescind orders, rules, and regulations necessary for emergency functions and shall coordinate all matters pertaining to the public health emergency response of the State; and

WHEREAS, pursuant to A.R.S. § 36-787(A)(1) and (2), the Arizona Department of Health Services ("ADHS") has primary jurisdiction, responsibility, and authority for planning and executing the public health emergency mitigation response for the State and coordinating the public health emergency response among State, local and tribal authorities; and

WHEREAS, the Director, pursuant to A.R.S. § 36-136(H), may define and prescribe emergency measures for detecting, reporting, preventing or controlling communicable or infectious diseases or conditions if the Director has reasonable cause to believe that a

serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months; and

WHEREAS, to attempt to both prevent and control the continued spread of COVID-19, which still poses a serious threat to public health and welfare, *and* comply with the Ruling, it is necessary to prescribe emergency measures to establish the process for phased reopening under conditions most likely to protect public health and welfare.

NOW, THEREFORE, I, Cara Christ, M.D., M.S., by virtue of the authority vested in me as the Director of ADHS, in order to address the State of Emergency and the serious threat to public health and welfare posed by the continued spread COVID-19 hereby prescribe the following Emergency Measure:

1. Indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars shall remain closed as required under Executive Order 2020-43, as extended by Executive Order 2020-52, and as may be further extended unless (a) they meet, on an individual basis, the terms and conditions for reopening described herein or (b) they apply to ADHS for approval to reopen, prove they have taken or will take such extra steps beyond those required herein as may be necessary to operate safely, and are expressly granted by ADHS approval to reopen.
2. Based on Benchmarks reporting the (a) number of new cases per 100,000 residents, (b) testing percent positivity, and (c) percent of COVID-like illness, ADHS is, for each Arizona county, categorizing the COVID-19 risk as "Substantial," "Moderate," or "Minimal." These Benchmarks are reported at <http://azhealth.gov/businessCOVID19>, along with a brief summary of the Phased Reopening limitations applicable to each business thereunder. The Benchmarks must be met for 14 consecutive days to move from a higher transmission category to a lower one. If the benchmarks increase from a lower transmission category to a higher one for 14 consecutive days, a new Attestation shall be filed, and the Guidelines applicable to the higher category shall be followed.
3. To apply for phased reopening under Section 1(a), businesses closed by Executive Order 2020-43 and 2020-52¹ shall complete the Attestation found at <https://medsisprod.azdhs.gov/EO2020-43AttestationFormSubmission/>, implement and abide by Department-specified mitigation Guidelines applicable to that business found at azhealth.gov/businessCOVID19, including the percent occupancy limitations for the applicable transmission category, and post a copy of the Attestation and Guidelines in a prominent place on or near the main entry into the business. The business may reopen after fully complying with these requirements.

¹ Bars with a Series 6 or 7 Liquor License were closed under EO2020-43, which was continued by EO2020-52. However, the Attestation and Guidelines requirements of this Emergency Order apply to all businesses operating with a liquor license, no matter what series of license is held.

If a county moves from a higher transmission category to a lower one, any business desiring to operate under the limitations of the lower transmission category must first repeat the application process provided herein.

4. If a closed business is located in a county that does not meet the community transmission metrics in the Moderate or Minimal category (i.e., the county transmission category is Substantial), the business must remain closed.
5. A business that must remain closed may apply to ADHS for approval to reopen if it can prove that it has taken or will take such extra steps, beyond those required in the Guidelines and Benchmarks for counties whose community transmission metrics are in the Moderate category. Such businesses must prove to ADHS that it has taken and will take such additional actions as are necessary to operate safely. Any business filing such an application shall remain closed unless or until it is expressly granted approval to reopen.
6. A business whose application for approval to reopen is denied may request an Informal Settlement Conference with ADHS to discuss whether there are conditions under which it may reopen by sending a request to acr@azdhs.gov.
7. If required to remain closed after an Informal Settlement Conference, the business has the right to request a hearing before the Arizona Office of Administrative Hearings and to have an Administrative Law Judge review the continuing closure. See A.R.S. § 41-1092.03(B). The business may request a hearing by submitting a written request to the Clerk of the Department, Arizona Department of Health Services, 150 North 18th Avenue, Suite 200, Phoenix, AZ 85007 **within thirty (30) calendar days** after the Informal Settlement Conference.
8. If a business does not timely request a hearing after the Informal Settlement Conference, the continued closure of the business will not be subject to judicial review. A.R.S. § 41-1092.08(H).
9. Notwithstanding any other law or Executive Order, for the purposes of executing this Emergency Measure and in order to ensure coordination between the State and local authorities related to this Emergency Measure, law enforcement, any regulatory agency, pursuant to their regulatory authority, ADHS and local health departments may take immediate action against any entity that operates in violation of this Emergency Measure.
10. Notwithstanding any other law or Executive Order, for the purposes of executing this Emergency Measure and in order to ensure coordination between the State and local authorities related to this Emergency Measure, law enforcement, any regulatory agency, pursuant to their regulatory authority, ADHS and local health departments may take immediate action against any entity that operates in a violation of its Attestation or the applicable Department-specified mitigation Guidelines.
11. Notwithstanding any other law, if ADHS becomes aware of continued actions taken by the entities covered by this Emergency Measure that jeopardize the health, safety

and welfare of the public, ADHS will take additional action as necessary to protect the health, safety and welfare of the public.

12. If any provision of this Emergency Measure or its application to any person, entity or circumstance is held invalid by a court of competent jurisdiction, this invalidity does not affect any other provision or application of this Emergency Measure, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Emergency Measure are declared to be severable.
13. This Emergency Measure shall remain in effect for no longer than eighteen months.

Having authority to do so under Arizona law, I have executed this Emergency Measure on this 10th day of August, 2020.

Cara Christ M.D.

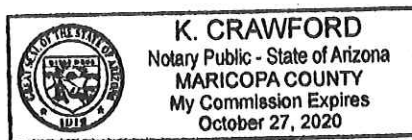
Cara Christ, M.D., M.S., Director, Arizona Department of Health Services

ON this 10th day of August, 2020,

Cara Christ, M.D., M.S., Director of the Arizona Department of

Health Services, signed and acknowledged this document

in my presence.



K. Crawford

Notary Public

Exp. October 27, 2020