

PUBLIC HEALTH ORDER REQUIRING FACIAL COVERINGS FOR SCHOOLS AND CHILD CARE SETTINGS

Pursuant to C.R.S. §§ 25-1-506, 508, and 509, the Tri-County Health Department (“TCHD”) hereby issues this Public Health Order requiring, in the absence of an approved vaccine for children under the age of 12 years, facial coverings to be worn by all children aged 2 years to and including 11 years, as well as all individuals working with or interacting with children aged 2 years to and including 11 years, in all indoor Child Care and School Settings in Adams County, Arapahoe County, and Douglas County. The goals and purposes of this Order are to control and slow the spread of the SARS-CoV-2 virus (“coronavirus”) and to mitigate the effects of the disease resulting therefrom (the coronavirus and the disease resulting therefrom shall be referred to herein as “COVID-19”), to protect the public health, safety, and welfare, and to maintain consistent healthcare capacity in TCHD’s jurisdiction.

FINDINGS

Whereas, TCHD has public health jurisdiction over Adams, Arapahoe, and Douglas Counties. In furtherance of its jurisdiction, TCHD has the power and duty to investigate and control the causes of epidemic or communicable diseases and conditions affecting the public health within its jurisdiction, as well as the power and duty to close schools and public places and to prohibit gatherings of people when necessary to protect public health, and to establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, to exercise physical control over property and over persons within TCHD’s jurisdiction as it may find necessary for the protection of public health; and

Whereas, COVID-19 is a respiratory illness transmitted through respiratory or aerosolized droplets that people expel when they breathe, cough, or sneeze. Persons can be infected with COVID-19 and be asymptomatic yet still contagious, including vaccinated persons; and

Whereas, the continued spread of COVID-19 throughout TCHD’s jurisdiction is evidenced in cumulative data, as of August 16, 2021, showing 166,291 positive cases and 1,900 deaths in TCHD’s 3-county jurisdiction, as well as the 7-day incidence rates (cases/100,000 population) recently exceeding 100 in all three counties: Adams at 125.7, Arapahoe at 121.6, and Douglas at 132.6

Whereas, the Colorado Department of Public Health and Environment (“CDPHE”) first detected the Delta variant of the SARS-CoV-2 virus in Colorado during the week of April 18, 2021; and as of the week of August 1, 2021, the Delta variant now constitutes 98.78% of all COVID-19 tests sampled for SARS-CoV-2 virus variant in Colorado, is approximately twice as contagious as previous variants of COVID-19, and may cause more severe illness particularly in unvaccinated persons. Unvaccinated persons remain the greatest concern for continued COVID-19 spread and disease burden; and

Whereas, fully vaccinated persons with Delta variant breakthrough infections can spread the virus to others; and

Whereas, the Delta variant is leading to a marked rise in case rates among children in TCHD’s jurisdiction as evidenced by this data: a) The weekly incidence rate during the time period of June 13 through August 8, 2021 increased by 464% among children aged 0 to 5 years; increased by 535% among children aged 6 to 11 years, and increased by 152% among children aged 12-19 years; and b) The 4-week incidence rate (mid-July to mid-August) in 2021 compared with the same time period in 2020 was 3.1 times higher among children aged 0 to 5 years, 4.2 times higher among children aged 6 to 11 years, and 1.6 times higher among children aged 12 to 17 years, indicating the community burden of pediatric COVID-19 disease at the beginning of the academic school was higher during 2021; and

Whereas, scientific evidence shows that the wearing of facial coverings by individuals assists in reducing virus transmission by reducing the spread of respiratory droplets; and

Whereas, according to the United States Centers for Disease Control and Prevention (“CDC”), COVID-19 continues to pose a serious health risk, especially to individuals who are not fully vaccinated, and certain viral mitigation measures remain necessary to protect against COVID-19 cases, hospitalizations, and deaths. On July 28, 2021, the CDC updated its guidance and recommended that all individuals, including those who are fully vaccinated, wear a face covering in all public indoor settings in areas of substantial or high transmission. As of August 17, 2021, the CDC identified Adams, Arapahoe and Douglas Counties as areas with high transmission; and

Whereas, given the new evidence on the Delta variant, the CDC, CDPHE, and TCHD, in order to prioritize critical in-person learning, have recommended universal indoor masking for all staff, students, teachers, and visitors to K-12 schools aged 2 years and older, regardless of vaccination status; and

Whereas, the CDC has found that adopting universal masking policies can help avert school closures and isolation or quarantine, especially if combined with other non-pharmaceutical interventions such as social distancing, hand hygiene, and adequate ventilation; and

Whereas, universal mask wearing is intended to reduce disruptive isolations and quarantines in schools and child care facilities; and

Whereas, the CDC has conducted research and extensively reviewed scientific studies and concluded that mask use has been found to be safe and is not associated with clinically significant impacts on respiration or gas exchange. And while the mental health impact of the COVID-19 pandemic on children is clear, Children’s Hospital Colorado clarified that mask wearing has not been linked to mental health problems in children or any other group and did not contribute to their declared ‘state of emergency’ for pediatric mental health; and

Whereas, the close contact with large groups of non-household members for extended periods of time indoors, conditions inherent to Childcare and School Settings, create a less safe environment for unvaccinated children if universal masking is not implemented, particularly for those below 12 years of age who are not currently eligible for vaccination. Transmission of COVID-19 in these settings would pose considerable risk to individuals, including (1) risk to the health of children, especially those not yet eligible to receive the COVID-19 vaccine, (2) risk of transmission from infected children, staff, or teachers to family and others outside of the Child Care and School Settings, especially for those at higher risk of complications from COVID-19, and (3) risk of interference with in-person learning and other educational activities due to isolation of positive cases and quarantine of children exposed in these situations.

ORDER

A. Pursuant to the statutory authority granted to the Executive Director of Tri-County Health Department (TCHD), and at the authorization and direction of the TCHD Board of Health, the following is ordered:

1. All children 2 years of age to and including 11 years of age, as well as all individuals working with or interacting with children 2 years of age to and including 11 years of age, must wear a **Face Covering** while in any indoor **School Setting** in Adams County, Arapahoe County, and Douglas County.
2. All children age 2 years of age to and including 11 years of age, as well as all individuals working with or interacting with children 2 years of age to and including 11 years of age, must wear a **Face Covering** while in any indoor **Child Care Setting** in Adams County, Arapahoe County, and Douglas County.
3. Counties may opt-out of the application and enforcement of this Order in accordance with the

opt-out provisions set forth below at the end of this Order.

B. Definitions:

1. **Face Covering** as used in this Order, means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose and mouth and surrounding areas of the lower face. A Face Covering may be factory-made or may be handmade and improvised by using ordinary household materials. The Face Covering should fit snugly but comfortably against the side of the face; allow for breathing without restriction; and either be constructed of disposable mask materials or include multiple layers of fabric that can be laundered and machine dried without damage or change to shape. Face Coverings must cover the nose and mouth at all times and should remain in place until taken off safely. If a Face Covering moves during regular activity exposing the nose or mouth, it must be replaced with one that does not need to be frequently adjusted in order to reduce touching of the face. A Face Covering should be replaced when it becomes dirty, wet, and/or difficult to breathe through.

It must be noted that any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling, as well as face shields, are not Face Coverings under this Order and are not to be used to comply with this Order's requirements. Valves of that type permit droplet release from the mask and can put others nearby at risk.

A video showing how to make a Face Covering and additional information about how to wear and clean Face Coverings may be found on the [CDC's website](#).

2. **School Setting** means any indoor facility used for P-12 instruction of academic or extracurricular activities. School Setting includes public, private, and charter schools. School Setting includes all buildings on school property where individuals 11 years of age or younger may be present for any reason, as well as any place in Adams, Arapahoe, or Douglas Counties where school-based or sponsored activities are performed, even if such activities are not performed on school property. School Setting does not include home schooling by parents solely of their own children.
3. **Child Care Setting** means all licensed child care facilities, including in-home child care, and programs classified as license-exempt under the Colorado Child Care Licensing Act, including single skill-building and 72-hour camps; child care centers operated in connection with and on the premises of a church, shopping center, or business where children are cared for during short periods of time; special schools or classes for religious instruction or single skill-building purpose; in Adams, Arapahoe, and Douglas Counties.

C. Exemptions. The following individuals are excepted from the requirements of this Order:

1. Individuals under age 2; and
2. Individuals who cannot medically tolerate a Face Covering.

D. Exceptions. Individuals performing the following activities are exempt from the requirements of this Order while the activity is being performed:

1. Individuals who are hearing impaired or otherwise disabled or who are communicating with someone who is hearing impaired or otherwise disabled and where the ability to see the mouth is essential to communication.
2. Individuals seated during meal or snack time and who are actively eating or drinking.

3. Individuals who are asked to temporarily remove their Face Covering for identification purposes in furtherance of a particular service requiring legal identification.
 4. Individuals who are actively engaged in a public safety role, such as law enforcement personnel, firefighters, or emergency medical personnel.
 5. Individuals who are receiving a personal or medical service where the temporary removal of a Face Covering is necessary to perform the service.
 6. Individuals who are in a swimming pool or actively engaged in a pool activity in which their Face Covering might become wet.
 7. Individuals engaged in gymnastics, tumbling, cheer, or wrestling, where it is not safe to wear a Face Covering.
 8. When a student in a School Setting is actively playing an instrument that cannot otherwise be played while wearing a Face Covering.
 9. Individuals who are actively napping or resting pursuant to state licensing requirements.
 10. Individuals who are alone in an enclosed room.
 11. Individuals who are officiating or participating in a religious service or practice at an indoor School Setting or Child Care Setting where the temporary removal of a Face Covering is necessary to complete or participate in the religious service or practice.
- E. Supervision.** Teachers, caregivers, and parents shall supervise the use of Face Coverings by children to avoid misuse. Additionally, nothing in this Order requires that children under the age of two (2) years wear a Face Covering.
- F. Americans with Disabilities Act.** The requirements of this Order shall be applied in a manner consistent with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), Title VII of the Americans with Disabilities Act (42 U.S.C. § 2000e et seq.), the Colorado Anti-Discrimination Act (C.R.S. §24-34-401 et seq.), and any other applicable federal or State law.
- G. Signage Requirements.** All facilities covered by this Order shall post on all entrances a sign which states that, pursuant to Tri-County Health Department Public Health Order Requiring Facial Coverings for Schools and Child Care Settings, no individual may enter the facility without wearing a Face Covering unless a specific exception applies. Template signage is available at <https://www.tchd.org/DocumentCenter/View/9238/Public-Health-Order-Mask-Required-In-Building-schools>
- H. Refusal of Service.** Except for the limited exemptions and exceptions provided above, no facility subject to this Order may allow an individual to enter or remain within their indoor space unless the individual is wearing a Face Covering as required by this Order.
- I. Reasonable Accommodations.** TCHD recommends that schools and licensed child care facilities review the State of Colorado's [Civil Rights Guidance](#).

OTHER PUBLIC HEALTH ORDERS RELATED TO COVID-19

This Order is intended to be and shall be read and construed in concert with and as a supplement and addition to all federal, state, and local laws and orders related to COVID-19.

To the extent any federal, state, municipal, school, or school district orders or laws are more restrictive than what is set forth herein, such order or laws control.

ADVISEMENT AND ADDITIONAL INFORMATION

Along with CDPHE, TCHD is tasked with protecting the health, safety, and welfare of the citizens of Adams, Arapahoe, and Douglas Counties as it relates to epidemic and communicable diseases, including COVID-19. This Order is necessary to control transmission of that disease to persons and to maintain consistent healthcare capacity in TCHD's jurisdiction. Immediate issuance of this Order is necessary for the preservation of public health, safety, and welfare.

If you have questions regarding this Order, or to report suspected violations of this Order please contact TCHD at 303-220-9200 or view the COVID-19 information on TCHD's website at www.tchd.org. Please do not call 911 to report violations of this public health order.

TCHD will attempt to seek voluntary compliance through education, technical assistance and warning notices. However, this Order may be enforced by any appropriate legal means. It is unlawful for any person to willfully violate, disobey, or disregard this Order. Any person who does so may be subject to the penalties provided in C.R.S. §§25-1-516 and 18-1.3-501. In addition, if you do not comply with this Order, TCHD may seek a court order in Colorado state district court to enforce this Order and/or to restrain or enjoin any violation of this Order.

Any person aggrieved and affected by this Order is entitled to Colorado state district court judicial review of this Order pursuant to and in accordance with C.R.S. §25-1-515. However, the aggrieved and affected person must continue to comply with the terms of this Order while his, her, or its request for judicial review is pending.

If any part or provision of this Order or the application thereof to any person or circumstance is held to be invalid, the remainder of this Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the parts and provisions of this Order are severable.

This Order shall take effect on **Monday, August 23, 2021**, at 12:01 AM and shall remain in effect until rescinded or amended in writing by the Executive Director of TCHD. TCHD will monitor and evaluate COVID-19 data, community conditions, and recommendations from expert groups on an ongoing basis to inform a decision whether to rescind or amend this order. In accordance with the TCHD [Board of Health Policy dated November 6, 2020](#), a County within TCHD's jurisdiction may, by written resolution of its governing body, opt-out of the application and enforcement of this Order by September 1, 2021 through written notification to TCHD at communications@tchd.org, which notification must attach a copy of the written resolution of the County's governing body. Any county that opts out of this Order may opt back in at any time through written notification to TCHD at communications@tchd.org. **A County's decision to opt-out of this Order does not preclude any individual school district, school, or child care facility from following this Order or adopting the provisions of this Order as their own policy or rule. School districts, schools, and child care facilities covered by the terms of this Order may not opt-out of the requirements of this Order.**

DONE AND SIGNED, as the official Order of the Executive Director/Public Health Director of the Tri-County Health Department on this 18th day of August, 2021 at the authorization and direction of the TCHD Board of Health.

TRI-COUNTY HEALTH DEPARTMENT

A handwritten signature in black ink, reading "John M. Douglas, Jr., M.D.", with a stylized flourish at the end.

By: John M. Douglas, Jr., M.D.
Executive Director