



**Commissioner's Determination on Indoor Masking Pursuant to 10 NYCRR 2.60**

**December 10, 2021**

Pursuant to [10 NYCRR 2.60](#), I hereby issue the following determination, which includes findings of necessity, to support the face masking/covering requirements set forth below, effective December 13, 2021:

**Findings of necessity:**

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice as transmissible as the SARS-CoV-2 strain. Cases have risen 10-fold since early July, and 95 percent of sequenced recent positives in New York State were the Delta variant. A winter surge of the Delta variant is now underway, and a new variant of concern, Omicron, appears to be spreading.

The winter holiday season brings people together. Individuals are engaging in more activities that put them amongst crowds in indoor public places - shopping, gathering, visiting traditional tourist and holiday themed venues. As the work to vaccinate New Yorkers continues, the new requirement will ensure that there is protection in all indoor settings through either vaccination status or mask-wearing. Properly wearing an appropriate mask is an effective measure to protect against the transmission of the COVID-19 virus, including its variants. Since Thanksgiving, the statewide seven-day average case rate has increased by 43% and hospitalizations have increased by 29%. While the percentage of New Yorkers fully vaccinated continues to increase—gaining 2% from Thanksgiving weekend to now—the uptick is not fast enough to completely curb the spread of the virus, particularly among communities with low vaccination coverage.

The above findings demonstrate the necessity for the implementation of further prevention strategies that include face coverings/masks in all indoor public places. This requirement should help slow transmission and reduce the consequent increase in hospitalizations. COVID-19 spreads through respiratory droplets, and several studies have shown that appropriate face coverings/masks reduce the spray of droplets when worn correctly, fully covering one's nose and mouth. Additionally, [as noted by the CDC](#), multiple "real-world" studies have shown a substantial decrease in SARS-CoV-2 transmission, including:

- Mask use during an outbreak aboard the USS Theodore Roosevelt, a close, congregate environment, was associated with 70% decrease in risk of infection.
- A study from Thailand documented that those who reported mask use during high-risk exposures experienced a more than 70% reduced risk of acquiring the disease compared to those who did not report such mask use during high-risk exposures.
- A study in China demonstrated that mask use by both the index patient and family contacts before symptom onset reduced secondary transmission within households by 79%.

- A study of 11 school districts in North Carolina with in-person learning for at least nine weeks during the fall 2020 semester reported minimal school-related transmission even while community transmission was high. These schools implemented and strictly adhered to multiple prevention strategies, including universal mask use and physical distancing. Breaches in mask use likely explained the few instances of in-school spread of SARS-CoV-2.

Further, as also reported by the CDC, research supports that there are no significant health effects or changes in oxygen or carbon dioxide levels from mask wear.

Accordingly, based on the foregoing findings of necessity, I hereby issue the following masking requirements:

### **Face Covering/Masking Requirements<sup>1</sup>**

#### **1. Healthcare settings:**

- a. *Personnel:* After careful review and consideration of [CDC recommendations](#) for face masks in healthcare settings regulated by the Department, I hereby adopt such recommendations, imposing them as requirements, where applicable. Accordingly, all personnel, regardless of vaccination status, in a healthcare setting (i.e., facilities or entities regulated under Articles 28, 36 and 40 of the Public Health Law) shall wear an appropriate face mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded.
- b. *Visitors to Healthcare Facilities:* After careful review and consideration of [CDC recommendations](#), all visitors over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in health care facilities, regardless of vaccination status, subject to applicable CDC exceptions, and until this determination is modified or rescinded.

#### **2. Adult care facilities (ACFs) regulated by the Department:**

- a. *Personnel:* After careful review and consideration of the core principles for infection control to protect the health and safety of both fully vaccinated and unvaccinated residents, all ACF personnel, regardless of vaccination status, shall wear an appropriate face mask if providing direct medical care and at a minimum, a cloth face covering by other staff in such settings, in accordance with any applicable CDC exceptions, until this determination is modified or rescinded.
- b. *Visitors:* After careful review and consideration of [CDC Recommendations](#), all visitors, who are over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in such setting, subject to CDC exceptions, and until this determination is modified or rescinded.

#### **3. P-12 school settings:**

- a. After careful review and consideration of [CDC Recommendations](#) for face coverings/masks in school settings, I hereby adopt such recommendations, imposing them as requirements, where applicable, until this determination is modified or rescinded<sup>2</sup>. Accordingly, universal

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<sup>1</sup> Nothing in this determination shall be interpreted as inconsistent with the Americans with Disabilities Act (ADA), workplace safety guidelines, or applicable federal regulations.

<sup>2</sup> Guidance from the [American Academy of Pediatrics](#) was also reviewed when making face covering/masking determinations in school settings, which is consistent with the above referenced CDC recommendations.

masking of teachers, staff, students, and visitors to P-12 schools over age two and able to medically tolerate a face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded. Such requirement is subject to applicable CDC-recommended exceptions.

- b. In accord with the general adoption of universal masking in P-12 settings, that requirement is extended to any gathering on school grounds which addresses or implements educational matters where students are or may reasonably be expected to be present. In the event that officials presiding over public meetings implicated by this directive are unable to guarantee compliance with such masking requirements, they are advised to implement full virtual access to public meetings in accord with the September 2021 amendment to the New York State Open Meetings Law.
- c. This determination does not provide for the implementation of “mask breaks” during the school day, nor does it provide for an exception to the masking requirement on the basis of minimal social distancing in classrooms. This is in accordance with CDC guidance recommending universal masking in schools to keep children in school without risking close contact exposure and subsequent quarantines.

4. Correctional facilities and detention centers:

- a. Incarcerated/Detained Persons and Staff: After careful review and consideration of [CDC recommendations](#) for face coverings/masks, all incarcerated/detained Persons and staff shall wear an appropriate face covering/mask when social distancing cannot be maintained, and in accordance with applicable CDC exceptions (e.g., eating and sleeping), until this determination is modified or rescinded.
- b. Visitors: After careful review and consideration of [CDC recommendations](#) for face coverings/masks in correctional facilities and detention centers, all visitors over age two and able to medically tolerate a face covering/mask shall wear an appropriate face covering/mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded. Correctional facilities and detention centers may impose their own policies for private visitation.

5. Homeless Shelters (including overnight emergency shelters, day shelters, and meal service providers):

- a. After careful review and consideration of [CDC recommendations](#), all clients, visitors, staff, and volunteers over age two and able to medically tolerate a face covering/mask shall wear an appropriate face mask/covering regardless of vaccination status, when social distancing cannot be maintained and in accordance with applicable CDC exceptions (e.g., eating and sleeping), until this determination is modified or rescinded.

6. Public Transportation Conveyances and at Transportation Hubs

- a. After careful review and consideration of [CDC recommendations](#) for face coverings/masks on public transportation conveyances and at transportation hubs, all persons, over age two and able to medically tolerate a face covering/mask, regardless of vaccination status, shall wear an appropriate face covering/mask while in indoor areas of conveyances or while indoors at transportation hubs, in accordance with applicable CDC exceptions, until this determination is modified or rescinded.
- b. Updates to the above referenced CDC recommendations will not necessarily require issuance of a revised or modified determination. However, such CDC recommendations will be continuously monitored by the Department, and updated determinations issued, as appropriate.

7. All Indoor Public Places Not Otherwise Covered by This Determination

- a. After careful review and consideration of the increasing number of COVID-19 cases and hospitalizations statewide, and in alignment with [CDC recommendations](#) for communities with substantial and high transmission, all persons, over age two and able to medically tolerate a face covering/mask, regardless of vaccination status, shall wear an appropriate face covering/mask while in any indoor public place.
- b. This requirement shall not apply to any indoor public area that requires proof of vaccination as a condition of entry.
- c. For purposes of this determination “indoor public place” shall mean any indoor space that is not a private residence.
- d. This requirement shall be in effect until January 15, 2022.

Updates to the above referenced CDC recommendations will not necessarily require issuance of a revised or modified determination. However, such CDC recommendations will be continuously monitored by the Department, and updated determinations issued, as appropriate.



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Mary T. Bassett, M.D., M.P.H.  
Acting Commissioner of Health