

STATEMENT OF EMERGENCY
902 KAR 2:213E.

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. According to the Centers for Disease Control and Prevention ("CDC"), the Delta variant is nearly twice as contagious as previous COVID-19 variants, and fully vaccinated people with Delta variant breakthrough infections can spread the virus to others. Hospitalizations from COVID-19 are doubling every two weeks, by far the fastest rate of growth of the pandemic. The surge of hospitalizations of children with COVID-19 is causing children's hospitals to become overwhelmed, with recent CDC data showing an average of 225 children with COVID-19 admitted to U.S. hospitals every day over the past week, which is a 45.7% increase from the prior week in daily new hospitalizations of children age 17 and under. The American Academy of Pediatrics recently reported that more than 93,000 children and teenagers were infected with COVID-19 last week, up 84% from the previous week and five times as many cases as the end of June. The CDC now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology
(New Emergency Administrative Regulation)

902 KAR 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency.

RELATES TO: KRS 211.180(1), 214.010, 214.645, 333.130

STATUTORY AUTHORITY: KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.020 requires the Cabinet for Health and Family Services to take action, promulgate, adopt, and enforce rules and regulations it deems efficient in preventing the introduction or spread of infectious or contagious disease within this state. KRS 211.025 requires the cabinet to perform actions reasonable necessary to protect and improve the health of the people. KRS 211.180(1) requires the cabinet to enforce administrative regulations to control communicable diseases. This administrative regulation establishes requirements for face covering in child care settings in response to a declared national or state public health emergency.

Section 1. Definition. "Face covering" means a material that covers the nose and mouth and that:

- (1)
 - (a) Is secured to the head with ties, straps, or loops over the ears; or
 - (b) Is wrapped around the lower face;
- (2) May be made of a variety of materials, including cotton, silk, or linen;
- (3) Shall have two (2) or more layers; and
- (4) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

Section 2. Personal Protective Equipment (PPE) Requirements.

- (1) All staff, volunteers, visitors, parents, guardians, and all children age 2 and older who are able to wear a face covering, shall wear a face covering while inside a child care center or family child care home, unless they meet any of the exemption criteria established in subsection (5) of this section;
- (2) A provider shall make face coverings available to children, parents, guardians, and other adults permitted into the facility.
- (3)
 - (a) A provider shall require all children (2) years of age or older to wear a face covering;
 - (b) A child who is younger than two (2) years of age shall not wear a face covering due to increased risk of suffocation and strangulation;
 - (c) A face covering lanyard shall be prohibited for all children due to increased risk of suffocation and strangulation.
- (4) If a child age two (2) or older or an adult refuses to wear a face covering, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility.
- (5) The following shall not be required to wear a face covering:
 - (a) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own;
 - (b) Any person with a disability, or a physical or mental impairment, that prevents them from safely wearing a face covering;

- (c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, an is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;
- (d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;
- (e) Any person who is seated and actively consuming food or beverage;
- (f) Any person who is obtaining s service that requires temporary removal of the face covering in order to perform the service;
- (g) Any person who is required to temporarily remove their face covering to confirm their identity or for security or screening purposes;
- (h) Any person who is giving a speech or broadcast to an audience and is able to maintain a safe distance of six feet from all individuals who are not members of the person's household;
- (i) Any person who is in a swimming pool or other body of water indoors;
- (j) Any person who is actively engaged in exercise indoors in a facility; and
- (k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering.

Section 3. Effective Date.

- (1) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:
 - (a) Expiration of the time period established by KRS 13A.190; or
 - (b) Withdrawn in accordance with KRS 13A.190(12).
- (2) The Cabinet for Health and Family Services shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

Section 4. Reference. Guidance on how to make a face covering at home is available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 12, 2021 at 8:17 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 20, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing.

Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.