

FREQUENTLY ASKED QUESTIONS

DPHHS TEMPORARY EMERGENCY RULE – GUIDANCE FOR SCHOOLS

Question: Where can I find the DPHHS emergency rule with guidance for schools on masking in schools and students/parents ability to opt-out of school health-related mandates for health, religious, or other fundamental rights reasons?

Response: The rule is [posted here](#).

Question: What is the authority for DPHHS to issue an emergency rule?

Answer: The authority to issue emergency rules can be found under section [2-4-303, MCA](#).

Question: What is the effective date and duration of the rule?

Response: The emergency rule took effect upon filing on August 31, 2021, and under section 2-4-303, MCA, and will last for a period of up to 120 days.

Question: Does the rule apply to just K-12 public and private schools?

Response: Yes. Based upon the DPHHS' statutory grant of rulemaking authority, the rule applies to public and private K-12 schools.

Question: As a parent, does this emergency rule provide me with authority to exempt my child from an existing school mask mandate?

Response: This emergency rule is advisory in nature with recommendations for schools as they craft their policies. It does not overrule existing or future policies for masking in schools.

Question: The new rule states schools "should" allow parents to opt out. Are they required to allow parents to opt-out?

Response: The rule provides guidance that schools and school districts should consult parents on mask mandates in schools and provide students and parents with the ability to opt out of a mask mandate in certain circumstances.

Question: Does this mean school districts can self determine whether to provide the opt-out ability or does this mean school districts must provide the opt-out ability?

Response: The rule provides guidance that schools and school districts should consult parents on mask mandates in schools and provide students and parents with the ability to opt out of a mask mandate. Recognizing and honoring the fundamental rights of parents, considering the lack of scientific clarity on the extent mask mandates are effective in schools, and reviewing the scientific evidence about the negative impact of prolonged mask wearing on kids, the emergency rule indicates school districts should let parents decide what's best for their kids, in consultation with their medical provider.

Question: What does DPHHS recommend to students/parents that would support an exemption?

Response: In the emergency rule, DPHHS suggests the type and amount of documentation, which the legislature outlined in HB 334 for exemptions from school vaccinations requirements, may serve as an appropriate model. HB 334 provides:

- A medical exemption from immunization requirements with appropriate documentation from a qualified health care provider attesting to the medical condition or conditions for which vaccination is contraindicated for the individual.
- A religious exemption from immunization requirements if the individual presents a notarized affidavit stating that immunization is contrary to the religious tenets and practices of the individual.

Question: What prompted it to be put in place?

Response: DPHHS is charged with providing consultation on conditions and issues of public health importance to schools, to school and local public health personnel, and the superintendent of public instruction under section 50-1-202(1)(I), MCA. DPHHS is also charged with adopting and enforcing rules regarding public health requirements for schools, including any matters pertinent to the health and physical well-being of pupils, teachers, and others. *See* sections 50-1-202(1)(p)(v) and 50-1-206, MCA. For example, DPHHS issued rules regarding health screenings in schools, in which we recommend, but do not mandate, certain health screenings for students. In ARM 37.111.825, DPHHS recommends that students be evaluated by registered professional nurses or other appropriately qualified health professionals on a periodic basis in order to identify those health problems which have the potential for interfering with learning, including assessment of student's health and developmental status..

In this case, parents throughout Montana have had communications with the Governor's Office, DPHHS, and, from what we understand, OPI with questions about mask mandates, their rights as parents, whether certain health conditions would qualify for exemption, etc. Also, we know that many schools have recently implemented policies or are in the process of crafting policies for mask use in schools. DPHHS issued this rule to aid all schools by ensuring a consistent framework of considerations and recommendations were available to decisionmakers and stakeholders in these situations.