



Sent via email to [kelly@wflawfirm.com](mailto:kelly@wflawfirm.com)

May 8, 2020

Kelly Zorn Lowery  
Sedgewick County Attorney  
Williamson Lowery Fredregill  
214 Poplar Street, Suite 201  
PO Box 70  
Sterling, CO 80751

RE: Sedgewick county Variance Request from portions of **Executive Order D 20 044** and **Public Health Order 20-28**

Dear Ms. Lowery:

Thank you for your April 28, 2020 letter to the Colorado Department of Public Health and Environment (CDPHE) requesting a variance to portions of **Executive Order D 20 044 Safer at Home** and **Public Health Order 20-28 Safer at Home**. I have had an opportunity to review your request and consider the information provided, and determine that the request is approved, with some amendments, as explained further below<sup>1</sup>. This variance approval is limited to the three functions for which you requested a variance; in all other respects, the requirements of the Safer at Home Executive Order and Public Health Order remain in effect.

You asked for a variance related to three specific functions, including Restaurants and Bars (CDPHE Order, Sec. II.A.), and Gyms (CDPHE Order, Sec. II.A.4.). Your COVID-19 Suppression Plan addresses particular requirements that you propose as an alternative to the Safer at Home model for each of these areas. The data and information included in your request demonstrates that Sedgwick has no reported COVID-19 cases, and an 8-bed hospital capacity to care for COVID-19 positive patients.

Regarding surveillance, the Suppression Plan should be enhanced as follows:

- In addition to the 10% positivity rate as a threshold for tightening restrictions, also select a weekly case count number that the Northeast County Health Department can

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<sup>1</sup> The documents included with the Sedgwick variance request included information pertaining to areas for which the county did not identify in the variance application that it sought a variance. This approval addresses only the three (3) areas identified in the application for variance, namely restaurants, bars and gyms. Note that the variance process is not applicable to voluntary and elective surgeries and procedures; those items are addressed in **Executive Order D 2020 045** and **Public Health Order 20-29**, neither of which authorizes a variance process.

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manage for case investigations, contact tracing, and outbreak response. These triggers should be incorporated into the county's decision making concerning when Sedgwick would tighten its restrictions.

- Set county standards for an adequate volume of testing to ensure detection of COVID-19 ensure adequate access to testing (specimen collection) in the county. For example, is there a testing program in LTCFs or among patients admitted to the hospital who are asymptomatic that may support community surveillance?

There is concerning language in the Suppression Plan regarding considering the provision of accommodations to Vulnerable Populations. While it is both appropriate and encouraged to provide accommodations in all settings for Vulnerable Populations in the provision of services, note that no variance is granted to lessen any existing protection for workers who are vulnerable.

With respect to the three areas that you requested receive a variance, each is authorized with the amendments described below to the COVID-19 Suppression Plan. For reopening restaurants and bars, several modifications are needed to the list of additional requirements, as follows:

- Restaurant employees must be screened for symptoms each day before beginning work, and those who are symptomatic must be excluded from the workplace and required to isolate for 10 days, per CDC guidance. Information on symptom screening can be found [here](#).
- Restaurant employees must wear face coverings, covering the nose and mouth, at all times while working.
- Customers must be asked prior to entering a restaurant whether they have any symptoms of COVID-19, and any customers reporting symptoms must be excluded.
- Customers must wear face coverings when entering the restaurant until seated at their tables.
- Customers should make reservations online or by phone, and every effort should be made to notify customers via text or phone call when their table is ready so no waiting in a lobby is necessary.
- Limit reusable items like menus, preferred use of menu boards or single service menus.
- Compliance checks should be done to ensure requirements are being met.

For gyms, in addition to the elements in the Suppression Plan, the following modifications must also be implemented:

- Employees must be screened for symptoms each day before beginning work, and those who are symptomatic must be excluded from the place of worship and required to remain in isolation for 10 days, per CDC guidance.
- Customers must be asked whether they have COVID-19 symptoms at the door and excluded from the facility if symptomatic.

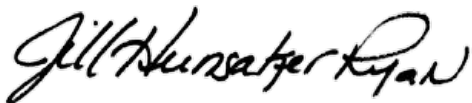
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- Customers should be encouraged to wear a face covering both when entering the facility and while in the facility, unless a face covering inhibits the participants ability to participate in the fitness activity.
- Given the many unknowns regarding how the SARS CoV-2 virus responsible for COVID-19 is spread, use of equipment in the gym must be limited to no closer than every other machine so that participants are not exercising right next to each other and smaller exercise rooms with poor ventilation should be discouraged from use.
- Employees must clean and disinfect shared equipment between customer uses.

This variance approval is granted based on the facts and circumstances today as you have described them in your request; however, should circumstances change such that, for example, surges in COVID-19 transmission occurs, cases exceed the capacity for Sedgwick County to fully implement all effective disease control strategies as described in your request, or if resources or COVID-19 prevalence statewide in our opinion requires a different approach, CDPHE reserves the right to modify or rescind this variance approval. This approval is in effect until the final expiration of PHO 20-28, which currently is set to expire on May 26, 2020 but may be extended.

I appreciate your thoughtful approach to these challenging issues, and wish you all the best in your continuing efforts to ensure that Sedgwick County residents are safe and healthy as we deal with this global pandemic. Sedgwick County is a valued partner, and we are available to answer any questions and work with you on these matters. Please give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jill Hunsaker Ryan". The signature is written in a cursive, flowing style.

Jill Hunsaker Ryan, MPH  
Executive Director