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NOV 19 2020

**REGULATIONS GOVERNING THE ENFORCEMENT OF
PUBLIC HEALTH GUIDANCE MEMORANDA AND DIRECTIVES
DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

Preface:

The Department of Public Health and Social Services (“DPHSS”) is authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of the *Islan Guåhan* Emergency Health Powers Act (“the Act”) and shall have the power to enforce the provisions of the Act through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by laws. 10 GCA § 19802. It is the purpose of this document to establish Regulations governing the enforcement of DPHSS Guidance Memoranda and Directives during the COVID-19 Public Health Emergency first declared by Governor Lourdes A. Leon Guerrero in Executive Order No. 2020-03 on March 14, 2020, and extended in several Executive Orders thereafter. These Regulations are dynamic and may be amended from time to time, in order to effectuate the provisions of the Act as the public health emergency develops.

These Regulations were developed in response to the surge in the spread of SARS-CoV-2, the virus that causes the COVID-19 disease, throughout the community in Guam, resulting in increased hospitalizations and deaths. Further, these Regulations reflect the acquired experience of the DPHSS and the Guam Police Department (“GPD”) in addressing complaints received from the community of businesses, organizations, and individuals violating DPHSS Guidance Memoranda and Directives issued to regulate standards and behavior in the community to prevent the transmission of COVID-19 and ensure all cases of COVID-19 are contained and treated.

1. Statutory Duties of DPHSS Pursuant to the Emergency Health Powers Act

The *Islan Guåhan* Emergency Health Powers Act (hereafter referred to as the “Act”), codified at 10 GCA § 19101 *et seq*, was passed with the legislative intent to authorize the exercise of extraordinary government powers and functions to respond rapidly and effectively to public health emergencies, including those caused by emergent and resurgent infectious diseases.

The Act authorizes the Governor of Guam to declare a public health emergency, in consultation with DPHSS, as the designated Public Health Authority, and other public health experts. 10 GCA § 19401.

The Act authorizes DPHSS to coordinate all matters pertaining to the public health emergency response of Guam, including the enforcement of orders issued pursuant to the Act with the assistance of the Guam Police Department, as the Public Safety Authority. 10 GCA §§ 19403(b) and 19404.

The Act requires DPHSS to use every available means to prevent the transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment. 10 GCA § 19601.

The Act authorizes DPHSS and other affected agencies to promulgate and implement rules and regulations as are reasonable and necessary to implement and effectuate the provisions of the Act. 10 GCA § 19801.

The Act grants to DPHSS and other affected agencies the power to enforce the provisions of the Act through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law. 10 GCA § 19802.

2. History/Background of the COVID-19 Pandemic in Guam.

On March 14, 2020, pursuant to Executive Order No. 2020-03, Governor Lourdes A. Leon Guerrero, Governor of Guam, acting pursuant to the power provided by the Organic Act and the laws of Guam, declared a public health emergency due to the potential dangers posed by the 2019 novel coronavirus.

On April 30, 2020, pursuant to Executive Order No. 2020-11, Guam adopted a system of readiness, known as the Pandemic Conditions of Readiness (“PCOR”) that guides decision-making for purposes of coordinating health and safety responses, imposing restrictions on activities, and directing government services.

In Executive Order No. 2020-11, Governor Leon Guerrero further declared Guam to be in PCOR 1, imposing stringent restrictions on social gatherings, prohibitions on non-essential activities, impositions of conditions on operations of essential activities, and closures of congregate facilities, including schools.

On May 8, 2020, pursuant to Executive Order No. 2020-14, Governor Leon Guerrero declared Guam to be in PCOR 2, permitting limited activities to operate under moderate restrictions and allowing specific businesses to operate subject to DPHSS Guidance, occupancy limits, and implementation of mitigation measures.

On July 19, 2020, pursuant to Executive Order No. 2020-24, Governor Leon Guerrero declared Guam to be in PCOR 3, having achieved a consistently low positivity rate for COVID-19, expanded capacity to test all individuals with COVID-19 symptoms, and the continued capacity to monitor COVID-19 cases and trace their contacts through DPHSS’s contact tracing system. Under PCOR 3,

all businesses and activities, with few exceptions, were permitted to operate, subject to occupancy limitations and the implementation of mitigation measures.

Despite restrictions, COVID-19 cases in Guam dramatically spiked in August 2020, and on August 16, 2020, Guam reverted to PCOR 1 to try to slow COVID-19's spread in Guam.

On August 21, 2020, Governor Leon Guerrero issued Executive Order No. 2020-28, instituting a Stay-at-Home Order, and implementing the most restrictive conditions, closing all businesses and government offices except for those deemed critical and prohibiting the use of public spaces like beaches and parks for any purpose.

The Stay-at-Home Order was extended four (4) times in Executive Orders No. 2020-29, 2020-30, 2020-31, and 2020-32.

On September 25, 2020, in Executive Order No. 2020-34, Governor Leon Guerrero instituted a Safer-at-Home Advisory, permitting the operation of limited non-essential businesses at 25% occupancy, and limited outdoor recreation, but continuing the prohibition on public gatherings and congregations.

On October 1, 2020, in Executive No. 2020-36, Governor Leon Guerrero authorized the operation of additional businesses and activities during PCOR 1, including the resumption of congregations at places of worship at a limited occupancy load, small social gatherings, outdoor recreation, the reopening of public parks and beaches, limited allowances for gyms and fitness centers, and the operation of childcare facilities.

Following each of the aforementioned Executive Orders, DPHSS issued Guidance Memoranda and Directives establishing standards for operation and conduct of businesses and individuals to contain and mitigate the spread of COVID-19.

Executive Orders and consequent DPHSS Guidance Memoranda and Directives were issued based on advice and data received from the Physicians Advisory Group, and the Guam National Guard Surgeon Cell, and information from the U.S. Centers for Disease Control and Prevention, the World Health Organization, and other leaders in COVID-19 research nationally and internationally.

Notwithstanding the continued limitations on individual, business, and organizational activities throughout the duration of the pandemic, DPHSS and GPD have received thousands of complaints from members of the community regarding violations of DPHSS Guidance Memoranda and Directives.

DPHSS and GPD have responded to complaints against individuals, businesses, and organizations by counseling and educating such individuals, businesses, and organizations regarding applicable DPHSS Guidance Memoranda and Directives.

The Physicians Advisory Group and the Guam National Guard Surgeon Cell have further recommended implementation of enforcement measures against individuals, businesses, and organizations that violate DPHSS Guidance Memoranda and Directives, in furtherance of efforts to contain and mitigate against the spread of COVID-19.

On October 28, 2020, utilizing her statutory authority under 10 GCA § 19403(a)(1) and pursuant to Executive Order No. 2020-38, Governor Leon Guerrero suspended the rule-making procedures of the Administrative Adjudication Law to allow DPHSS to adopt enforcement regulations during the COVID-19 pandemic, finding that strict compliance with such procedures would hinder or delay necessary action in response to the COVID-19 public health emergency and increase the threat to the health of the community.

Pursuant to its authority under 10 GCA § 19802, DPHSS drafted the “Regulations Governing the Enforcement of Public Health Guidance Memoranda and Directives during the COVID-19 Public Health Emergency.”

Notwithstanding suspension of the Administrative Adjudication Law pursuant to Executive Order No. 2020-38, DPHSS posted the draft regulations on DPHSS website and published the scheduled public hearings to receive comments on the draft regulations in the Guam Pacific Daily News and the Guam Daily Post on October 30, 2020 and November 3, 2020, and conducted public hearings regarding the draft regulations on October 31, 2020 and November 4, 2020, during which it received oral and written testimony from members of the community regarding the regulations.

Following the public hearings and based on testimony received during those hearings, DPHSS revised the draft regulations.

Now, therefore, pursuant to its authority under 10 GCA § 19802, DPHSS hereby adopts the following:

“Regulations Governing the Enforcement of Public Health Guidance Memoranda and Directives during the COVID-19 Public Health Emergency.”

Chapter 4. Public Health and Sanitation

**Article 28 Regulations Governing the Enforcement of Public Health Guidance
Memoranda and Directives during the COVID-19 Public Health Emergency**

§ 428101. Purpose. The purpose of these rules and regulations is to protect and promote public health through the implementation of enforcement procedures for violations of guidance memoranda and directives issued by the Department of Public Health and Social Services (“DPHSS”) during the COVID-19 Public Health Emergency declared by Governor Lourdes A. Leon Guerrero in Executive Order No. 2020-03 on March 14, 2020. These rules and regulations shall be liberally construed and applied to ensure compliance with DPHSS’s guidance memoranda and directives.

§ 428102. Authority. Title 10 Guam Code Annotated, Chapter 19, Section 19802 authorizes DPHSS to promulgate and implement rules and regulations to implement and effectuate the provisions of the Chapter, and to enforce the provisions of the Chapter through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law.

§ 428103. Title. These rules and regulations shall be known as the *COVID-19 Public Health Enforcement Regulations*.

§ 428104. Definitions.

- (a) **Enforcing Officers** shall mean any designated individual with the Department of Public Health and Social Services, and any peace officer in the Guam Police Department.
- (b) **Business** shall mean a partnership, firm, association, corporation or other legal entity not otherwise defined herein.
- (c) **COVID-19** shall mean the disease caused by the SARS-CoV-2 virus.
- (d) **DPHSS or Public Health Authority** shall mean the Guam Department of Public Health and Social Services.
- (e) **Guidance Memorandums or Directives** shall mean the official documents issued by the Department of Public Health and Social Services as the Public Health Authority providing orders or guidelines for the mitigation, containment, and prevention of the spread of SARS-CoV-2, the virus that causes COVID-19, in Guam.
- (f) **Nonprofit Organization** shall mean:
 - (i) any organization which is described in § 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under § 501(a) of such Code; *or*
 - (ii) any *not-for-profit* organization which is organized and conducted, pursuant to the laws of Guam, for public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes.
- (g) **Person** shall mean any natural person.
- (h) **GPD or Public Safety Authority** shall mean the Guam Police Department.

§ 428105. Authority to Issue and Enforce Guidance Memoranda and Directives to Prevent Transmission of SARS-CoV-2.

- (a) Pursuant to Title 10 Guam Code Annotated Chapter 19 § 19601, during a state of public health emergency, DPHSS is authorized to use every available means to prevent the transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment. During the pendency of the COVID-19 Public Health Emergency declared by Governor Lourdes A. Leon Guerrero in Executive Order No. 2020-03 on March 14, 2020, DPHSS is authorized to use every available means to prevent transmission of SARS-CoV-2, the virus that causes COVID-19, and to ensure that all cases of COVID-19 are subject to proper control and treatment. Pursuant to Title 10 Guam Code Annotated, Chapter 19 Section 19404, DPHSS may further request assistance from the Guam Police Department (“GPD”) in enforcing applicable guidance memoranda and directives.
- (b) Violations of DPHSS guidance memoranda or directives as provided in these Regulations will be recorded on forms approved by and prosecuted within the Traffic Division of the Superior Court of Guam.
- (c) Enforcing Officers, as defined herein, shall have the power to issue citations to persons, businesses, and non-profit corporations violating the DPHSS Guidance Memoranda and Directives as provided in these Regulations.

§ 428106. Penalties/Fines for Violation of DPHSS Guidance Memoranda and Directives.

- (a) Prohibited Conduct.
 - (i) For persons, willful violation of, or failure to comply with any guidance or directive issued by DPHSS relating to the following shall constitute a civil violation:
 - (1) congregations or social gatherings;
 - (2) social distancing and the wearing of masks when congregating with persons not from the same household; or
 - (3) any restrictions on the use of public parks or beaches, and on organized or contact sports.
 - (ii) For businesses and nonprofit organizations, unless otherwise authorized by DPHSS, willful violation of, or failure to comply with, any guidance or directive issued by DPHSS relating to the following shall constitute a civil violation:
 - (1) the submission of mitigation plans;
 - (2) limitations on authorized operations;
 - (3) occupancy limitations;

- (4) social distancing and the wearing of masks for employees and/or patrons;
- (5) sanitation/disinfection requirements;
- (6) posting of signage;
- (7) any restrictions on indoor patronage, the use of waiting rooms and common areas, and walk-in patronage;
- (8) the requirement that such businesses keep logbooks or written records of guests; or
- (9) the sale of restricted items.

(b) Penalties.

- (i) For persons, willful violation of, or failure to comply with, any guidance or directive issued by DPHSS with respect to the COVID-19 public health emergency declared in Executive Order No. 2020-03, or any extension thereof, as provided in Section (a) above, shall be punishable as follows:
 - (1) For the first offense, such person shall be guilty of a civil violation punishable by a fine of One Hundred Dollars (\$100.00).
 - (2) For the second offense, such person shall be guilty of a civil violation punishable by a fine of Two Hundred Fifty Dollars (\$250.00).
 - (3) For the third offense, and each additional violation thereafter, such person shall be guilty of a civil violation punishable by a fine of One Thousand Dollars (\$1,000.00).
- (ii) For businesses and nonprofit organizations, unless otherwise authorized by DPHSS, willful violation of, or failure to comply with, any guidance or directive issued by DPHSS with respect to the COVID-19 public health emergency declared in Executive Order No. 2020-03, or any extension thereof, as provided in Section (a) above, shall be punishable as follows:
 - (1) For the first offense, such business or nonprofit organization shall be guilty of a civil violation punishable by a fine of One Thousand Dollars (\$1,000.00).
 - (2) For the second offense, such business or nonprofit organization shall be guilty of a civil violation punishable by a fine of Two Thousand Five Hundred Dollars (\$2,500.00).
 - (3) For the third offense, and each additional violation thereafter, such business or nonprofit organization shall be

guilty of a civil violation punishable by a fine of Ten
Thousand Dollars (\$10,000.00).

- (iii) Fines collected under this section shall be shared equally by GPD
and DPHSS with funds for DPHSS deposited into the DPHSS
COVID-19 account.

§ 428107. Severability. If any provision of these Regulations are held invalid, such
invalidity shall not affect the remaining provisions of these Regulations.”

These Regulations are adopted pursuant to 10 GCA § 19802, and Executive Order No. 2020-38,
and may be amended or otherwise as provided therein.


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