

# No Longer Taken at Face Value: Executive Order 7NNN and the New Requirement for Medical Documentation from Non-Mask Wearers (and What It Means To Connecticut's Schools)

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## Education Law Notes

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Back on April 17, 2020, Governor Lamont issued Executive Order 7BB generally requiring persons to wear “face-coverings” (e.g., masks) in public. <https://workingtogether.pullcomblog.com/archives/governor-lamonts-executive-order-requiring-face-coverings-its-impact-upon-employers/> The Order created an exemption to the obligation to use a mask or cloth face covering for, among others, anyone for whom doing so would “be contrary to his or her health or safety because of a medical condition.” Creating a significant loophole, the Order provided that a person declining to wear a mask or face covering because of a medical condition could

**not** be required to produce medical documentation verifying the stated condition. While the prior executive order was arguably designed for the general public (and businesses), schools were justifiably concerned that the order could be relied upon by parents as a basis for refusing to provide documentation to support a claim that their child is entitled to a medical exemption to wearing a mask. Executive Order 7NNN should resolve this dilemma for schools.

**Executive Order 7NNN's General Command:** Late on Friday, August 14, 2020, Lt. Governor Bysiewicz (in Lamont's absence) issued Executive Order 7NNN, which took effect immediately and amends the prior Order. Executive Order 7NNN continues that prior requirements that 1) any person in a public place in Connecticut (whether indoors or outdoors) who does not maintain a safe social distance of approximately six feet from every other person must cover their mouth and nose with a mask or cloth face-covering, and 2) persons wear such coverings whenever using the services of a taxi, car, livery, ride-sharing or similar service, or any means of mass public transit, or while within any semi-enclosed transit stop or waiting area.

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**Executive Order 7NNN's Exceptions:** Executive Order 7NNN contains exemptions to the obligation to wear a mask for 1) anyone for whom doing so would be contrary to his or her health or safety, because of a medical condition, 2) a child in a child care setting, or 3) anyone under the age of 2 years. Interestingly, the general exemption contained in Executive Order 7BB for a child whose parent or guardian is unable to place a mask safely on the child's face is NOT contained in Executive Order 7NNN. More importantly, Executive Order 7BB expressly provides that any person who declines to wear a mask or face covering because of a medical condition shall now be exempt from the mask mandate **only** if such person provides "written documentation that the person is qualified for the exemption from a licensed medical provider, the Department of Developmental Services or other state agency that provides or supports services for people with emotional, intellectual or physical disabilities, or a person authorized by any such agency." Such documentation need not name or describe the condition that qualifies the person for the exemption.

**Implementation and Enforcement of Executive Order 7NNN:** Executive Order 7NNN expressly provides that it supersedes and preempts any current or future conflicting municipal order. Executive Order 7NNN does **not** specify a direct consequence for disobedience of this new requirement, likely leaving the enforcement up to localities. Executive Order 7NNN states that it will remain in effect for six months, even though the current State of Emergency is set to expire on September 9, 2020.

**First of all, what does this mean for schools as employers?** Previously, work place policies addressing the mask mandate had to tip toe around the need for some level of verification for those claiming the medical exemption to this mandate. We had often urged something akin to an interactive process with such employees, understanding that while an employer could at least 1) require employees to notify it of the fact that they would not be wearing a mask due to a medical reason, and 2) have a conversation with the employee to understand the basis of the employee's objection to wearing a mask, the employer could not require the employee to provide medical documentation to support the exemption. Executive Order 7NNN not only permits a school (as an employer) to seek such documentation, it now essentially requires it to secure such documentation. Allowing an employee to avoid wearing a mask for a medical condition without medical documentation would put the employer in violation of Executive Order 7NNN, exposing the employer to possible enforcement actions, along with possible claims of an unsafe workplace.

It goes without saying that any medical documentation (and information therein) submitted by an employee must be afforded confidentiality consistent with state and federal law. It is important to note that Executive Order 7NNN expressly provides that the documentation need NOT get into the details of the medical condition qualifying the employee for the mask exemption.

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**What does this mean specifically for the schools and their students?** Schools were concerned that individuals with a generalized objection to wearing a mask would seek refuge behind a facial claim of a medical condition in order to avoid wearing a mask. Executive Order 7NNN provides comfort to schools that they may now request supporting documentation from parents claiming that their child has a medical condition that prevents him or her from wearing a mask; indeed, schools can now inform mask objectors that schools are **required** to obtain such documentation. In addition, the removal of the exemption from the prior executive order for a child whose parent or guardian is unable to place a mask safely on the child's face would appear to limit the exemption to a child's specific medical issues, as opposed to difficulty or convenience.

Even before Executive Order 7NNN was issued, the Connecticut State Department of Education stated in a FAQ document dated August 11, 2020, that it was "having ongoing conversations about appropriate ways to address mask wearing and the securing of medical documentation for those students who request an exception for a medical reason" and it would be providing "parameters before the first day of school." As of now, it is unclear whether Executive Order 7NNN would require a student who requires special education and has obvious issues (whether sensory, intellectual or emotional) with wearing a mask to obtain medical documentation supporting a request for a mask exception. It is also unclear whether (and how) a school could seek a "second opinion" from a medical professional of its choosing should it disagree with the documentation provided by a student (or an employee). As we are fond of saying, stay tuned for future guidance. **PLEASE NOTE:** On Friday, August 14, 2020, a pair of parents filed a lawsuit challenging the constitutionality of the requirement that students wear masks in school. <http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=19353146> We will keep you informed of the status of that long-shot lawsuit as well.

Pullman & Comley has policy templates and other useful resources available to assist Connecticut schools in considering and implementing their options and navigating the web of executive orders, laws, regulations, and other state and federal guidance related to COVID-19. Please contact any of our School Law attorneys for assistance.

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