



March 5, 2021

Tom Flower, Commissioner
Bill Canda, Commissioner
Kevin Day, Commissioner
Custer County Board of Health
via email

Cliff Brown, Director
Custer County Public Health Agency
via email

RE: COVID-19 Dial Requirements

Dear Commissioners and Director Brown:

It has come to my attention that the Custer County Board of County Commissioners voted this week to move Custer County out of any further COVID-19 Dial restrictions, effectively stating that schools, businesses, government organizations and individuals in Custer County have no ongoing obligation to implement the disease mitigation strategies regarding the COVID-19 pandemic found in executive orders and state public health orders. I write to inform you that such action is in direct violation of the Governor's executive orders and the state public health orders issued by the Colorado Department of Public Health and Environment (CDPHE).

Executive Order D 2020 235 created the COVID-19 Dial and set five levels, which were later modified to include a sixth level, for which counties would be eligible based on the metrics and criteria set forth by CDPHE in a corresponding public health order. Note that as described in the background section of the executive order, even in the least restrictive level of the Dial, Protect Our Neighbors, known as Level Green, counties have greater latitude to "create unique and flexible plans with in the statewide guidelines as we continue to open our economy and support people who are at increased risk for severe illness from COVID-19." The executive order further requires consultation with the State and the meeting of specified metrics in order for a county to move levels. Custer County has not consulted with CDPHE on moving levels in the Dial. As Custer County is in Level Blue, the second least restrictive level in the COVID-19 Dial, Level Green is the next least restrictive level for which Custer County could apply.

CDPHE issued **Public Health Order (PHO) 20-36 COVID-19 Dial** on November 2, 2020. This PHO contains the metrics and requirements for each level of the Dial, and further explains how counties will be moved either to more or less restrictive levels. In Section II of the PHO, it states that CDPHE will confirm metrics and move counties to the appropriate level as warranted. There is no authorization in the PHO for a county to move itself from one level to another, nor is a county authorized to move itself out of the Dial requirements entirely.

Custer County Dial Letter
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Executive orders have the force and effect of law, and all individuals, businesses, and jurisdictions must comply with the requirements of both executive orders and public health orders. The public health orders and executive orders have been upheld as valid by multiple Colorado courts. For the duration of our pandemic response, these orders have set the minimum requirements for counties to follow, and have expressly allowed counties to implement more restrictive measures as they choose. These orders do not, however, allow for counties to implement less stringent measures. There are other options available to loosen some restrictions, such as the variance allowances for site specific variances in large venues, and the 5 Star Program that allows certified businesses in a county with a CDPHE-approved 5 Star Program to operate at the next less restrictive level in the Dial than the county is currently qualified for.

We remain committed to ensuring a robust and successful response to this pandemic, and are optimistic that with enhanced vaccine supply from the federal government, Colorado will attain herd immunity as we get into late spring and early summer. Additionally, we are engaging in stakeholder efforts to revisit the Dial framework and intend to publish a revised Dial in early April. Until that time, counties must continue to follow the requirements of all executive orders and state public health orders. Failure to do so may result in sanctions, including the loss of federal or state funding to counties who are in violation.

Please confirm by 5 PM on March 6th that Custer County will take immediate action to inform its community that it is still under the requirements of Level Blue of the Dial, and let me know if you have any questions.

Sincerely,



Jill Hunsaker Ryan, MPH
Executive Director