

**Sixteenth Bavarian Infection Protection Measures Ordinance**  
**(16<sup>th</sup> BayIfSMV)<sup>[1]</sup>**  
**Of 1 April 2022**  
**(BayMBI. No. 210)**  
**BayRS 2126-1-20-G**

Full quote according to the editorial guidelines (RedR): Sixteenth Bavarian Infection Protection Measures Ordinance (16<sup>th</sup> BayIfSMV) of 1 April 2022 (BayMBI. No. 210, BayRS 2126-1-20-G)

In accordance with Article 32 sentence 1 in conjunction with Article 28 sub-para. 1, Article 28a sub-para. 7 of the Infection Protection Act (IfSG) of 20 July 2000 (Federal Law Gazette I p. 1045), last amended by Article 4 of the Act of 18 March 2022 (Federal Law Gazette I p. 473) and Article 9 no. 5 of the Ordinance on Responsibility to Issue Decrees (DeIV) of 28 January 2014 (Law and Ordinance Gazette p. 22, BayRS 103-2-V), last amended by the Ordinance of 15 March 2022 (Law and Ordinance Gazette p. 79), the Bavarian State Ministry of Health and Care orders:

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<sup>[1]</sup> Cf. the reasons required under Article 28a sub-para 7 IfSG which were published in BayMBI. No. 211 dd. 1.4.2022.

## **Part 1 Applicable regulations**

### **ARTICLE 1 General recommendations for conduct**

<sup>1</sup>All persons are urged to keep a minimum distance of 1.5 m from other people and pay attention to adequate hand hygiene wherever possible. <sup>2</sup>In enclosed areas, regardless of Article 2, it is recommended to wear at least a medical face mask and to ensure that the area is sufficiently aired. <sup>3</sup>For establishments, facilities, offerings and events visited by the public, it is recommended that hygiene concepts be drawn up which stipulate in particular measures to provide disinfectants and to avoid unnecessary contact.

### **ARTICLE 2 Mask obligation**

(1) <sup>1</sup>In

1. local public transport, for passengers as well as for inspection and service personnel and driving and steering personnel, insofar as they come into physical contact with other persons due to the nature of their work,
2. buildings and enclosed areas, including enclosed vehicle areas, to the extent necessary to prevent danger to persons who, due to their age or health status, are at increased risk of a serious or fatal course of COVID-19, of
  - a) doctors' practices,
  - b) hospitals,
  - c) facilities for out-patient surgery,
  - d) preventive care or rehabilitation facilities where medical care comparable to that offered in hospitals is provided,
  - e) dialysis facilities,
  - f) day clinics,
  - g) rescue services,
  - h) facilities for the in-patient care and accommodation or day-care of older people, people with disabilities or people in need of care, or comparable facilities, which are not subject to Section 23 sub-para. 5 sentence 1 of the Infection Protection Act (IfSG), except for special pedagogical day-care facilities,
3. buildings and enclosed areas, which are not private premises, of shelters for the homeless and facilities for the communal accommodation of asylum seekers, persons who are obliged to leave the country, refugees and ethnic German repatriates,

the obligation to wear an FFP2 mask applies (mask obligation). <sup>2</sup>Clause 1 no. 2 applies accordingly when nursing care and other care is provided by

1. outpatient care services which provide intensive outpatient care in facilities, residential groups or other communal living environments,

2. outpatient care services not subject to Section 23 sub-para. 5 clause 1 IfSG and establishments offering services which are comparable to the facilities specified in sub-para. 1 clause 1 no. 2 letter h, with the exception of offers for assistance in everyday life as defined in Section 45a sub-para. 1 clause 2 of the Eleventh Book of the German Social Code.

(2) The mask obligation does not apply if there are essential reasons against it.

(3) <sup>1</sup>The following persons are exempted from the mask obligation:

1. Children up to the age of six;

2. Persons who can credibly demonstrate that it is not possible or that it is unreasonable for them to wear a mask due to a disability or for health reasons, as long as they can prove this immediately on the spot, in particular by presenting the original copy of a written medical certificate, which must contain their full name, their date of birth and specific details of the reason for the exemption.

<sup>2</sup>Children and youths are only required to wear a medical face mask between their sixth and sixteenth birthday. <sup>3</sup>The mask may be removed if it is necessary for identification purposes or for communicating with persons with impaired hearing. <sup>4</sup>For employees, during their work activities the obligation to wear a medical face mask applies within the framework of occupational health and safety law.

(4) Operators are obligated to ensure that the requirements of the mask obligation are observed.

### **ARTICLE 3 Institutional testing requirements**

(1) <sup>1</sup>Access to

1. facilities and establishments as specified in Article 2 sub-para. 1 clause 1 no. 2 letters b and h,

2. correctional institutions, detention centres for deportees, other institutions for the correction of persons with special needs as well as other departments and facilities if and to the extent that permanent deprivation of liberty takes place there, in particular psychiatric hospitals, youth welfare homes and homes for the elderly

may only be granted to visitors, operators, employees and voluntary staff who are, as defined in Article 2 nos. 2, 4, 6 of the COVID-19 Protective Measures – Regulation of Exceptions (SchAusnahmV), vaccinated, recovered or tested. <sup>2</sup>In the cases of clause 1 no. 1 and, for visitors, in the cases of clause 1 no. 2, proof of a test result must also be presented by persons who are vaccinated or recovered within the meaning of Article 2 nos. 2 and 4 SchAusnahmV. Operators and employees who are vaccinated or recovered must present proof of a test result as per sub-para. 5 clause 1 at least twice per calendar week with the proviso that a test as specified in sub-para. 5 clause 1 no. 3 can also be carried out without supervision.<sup>3</sup>Operators are obligated to retain their own test results for two weeks and to inspect the proof of vaccination or recovery or test results that must be presented through effective access control including verification of the identity of each person.

(2) For operators and employees of facilities and establishments as specified in Article 2 sub-para. 1 clause 2, to the extent that they provide nursing or care services sub-para. 1 applies accordingly.

(3) Tending to a dying person is permitted at any time.

(4) <sup>1</sup>Prisoners or persons in preventive detention who have temporarily left a correctional institution are obliged, on the day of their return and then daily until the seventh day after their return, to present proof of a test result as specified in sub-para. 5 clause 1. <sup>2</sup>Notwithstanding clause 1, prisoners or persons in preventive detention who are vaccinated or recovered within the meaning of Article 2 nos. 2 and 4 SchAusnahmV must present proof of two test results as per sub-para. 5 clause 1 within the first seven days of their return.

(5) <sup>1</sup>Insofar as this Ordinance requires proof of the absence of infection with the SARS-CoV-2 coronavirus (proof of test result) for the use of or admission to certain facilities, establishments or areas, written or electronic proof must be presented of a negative test result gained on the basis of

1. a PCR test, PoC-PCR test or a test using other nucleic acid amplification methods, carried out no more than 48 hours previously,

2. a PoC antigen test carried out no more than 24 hours previously, or

3. an antigen test designed for self-administration by lay persons ('self-test') approved by the Federal Institute for Drugs and Medical Devices and carried out under supervision no more than 24 hours previously,

which additionally must conform to Article 22a IfSG. <sup>2</sup>The following persons are regarded as equivalent to tested persons:

1. Children up to the age of six,
2. Pupils who undergo regular testing in the course of school attendance,
3. Children not yet attending school.

## **ARTICLE 4 Schools**

(1) <sup>1</sup>Pupils, no matter whether they are vaccinated or recovered, are only permitted to participate in classroom teaching, in other school activities or face-to-face school holiday courses and lunchtime and emergency care groups if, three times a week, they provide proof of a test result as per Article 3 sub-para. 5 clause 1 nos. 1 and 2, or have taken a self-test provided by the school and to be used under supervision at school, with a negative result. <sup>2</sup>For pupils at elementary level, in years 5 or 6 or at special needs schools focusing on intellectual development, physical and motoric development and vision, clause 1 applies with the proviso that, after a decision by the State Ministry for Education and Culture, two PCR pool tests weekly may take the place of three weekly self-tests; in this case, every Monday morning proof of an additional test result must be presented or a self-test performed under supervision. <sup>3</sup>Compulsory school attendance remains unaffected. <sup>4</sup>After a case of infection becomes known in a class, the pupils of this class must provide daily proof of a test result for five days of classroom teaching. <sup>5</sup>The school will process the test result for the purposes referred to in clauses 1 and 2. <sup>6</sup>The test data will not otherwise be passed on to third parties, subject to reporting duties under the Infection Protection Act. <sup>7</sup>As regards participation in PCR pool tests, the laboratories and transport personnel engaged to perform the testing are not regarded as third parties in the meaning of clause 6. <sup>8</sup>The test result shall be kept for a maximum of 14 days. <sup>9</sup>The State Ministry for Education and Cultural Affairs may announce exceptions for pupils with special educational needs.

(2) For teachers, other persons working at schools and third persons, especially parents, Article 3 sub-para. 1 clause 1 applies accordingly.

## **ARTICLE 5 Child day care**

(1) <sup>1</sup>Children not yet attending school may, from the age of one, only use offers of day-care centres, special pedagogical day-care facilities and day-care babysitters and nannies if they take part in PCR pool testing in the facility or if their legal guardians provide proof of a test result as per Article 3 sub-para. 5 clause 1 nos. 1, 2 with regard to the child three times a week or credibly affirm that a self-test with a negative result was carried out on the child no more than 24 hours ago. <sup>2</sup>The providers of child day-care centres and special pedagogical day-care facilities and child minders must provide three tests per week of care for every child not yet attending school which enable direct pathogen detection of the SARS-CoV-2 coronavirus, or must make it possible for three self-tests to be collected from pharmacies free of charge. <sup>3</sup>When a case of infection within a group becomes known, the following applies for the next five days of day care:

1. in derogation of clause 1, children as referred to in clause 1 may, regardless of their vaccination or recovery status, only use offers if their legal guardians provide proof of a test result as per Article 3 sub-para. 5 clause 1 nos. 1, 2 with regard to the child every day or credibly affirm that a self-test with a negative result was carried out on the child no more than 24 hours ago;

2. in derogation of clause 2, the providers of child day-care facilities must offer five tests or make it possible for five self-tests to be collected from pharmacies free of charge.

(2) <sup>1</sup>Pupils may only attend day care if they have tested negative as set out in Article 4 sub-para. 1. <sup>2</sup>If the requirements for attending classroom teaching or emergency childcare on the same day as set out in Article 4 sub-para. 1 have not yet been met, Article 4 sub-para. 1 shall apply accordingly, with the exception that 'the childcare facility' shall replace 'the school'.

(3) For employees of the facilities specified in sub-para. 1 clause 1, Article 3 sub-para. 1 clause 1 applies accordingly.

(4) Third parties, in particular parents, may only enter the premises of the facilities – except for bringing or collecting the children – insofar as they are, as defined in Article 2 nos. 2, 4, 6 SchAusnahmV, vaccinated, recovered or tested.

## **Part 2 Final provisions**

### **ARTICLE 6 Additional instructions, exemptions**

(1) Additional or supplementary instructions from the authorities responsible for the enactment of the Infection Protection Act remain unaffected within the framework of Article 28a sub-para. 7 clause 2 IfSG.

(2) <sup>1</sup>Upon application, special exemptions may be granted by the responsible local authority provided that this is acceptable in terms of infection protection legislation. <sup>2</sup>Special exemptions for a general group of persons or a general constellation of cases may only be granted in agreement with the responsible government under the conditions of clause 1.

### **ARTICLE 7 Offences**

An offence within the meaning of Section 73 sub-para. 1a no. 24 IfSG is committed by anyone who, intentionally or negligently,

1. in breach of Article 2, does not comply with the mask obligation or, in breach of Article 2 sub-para. 4, in their role of operator does not ensure that the mask obligation is complied with,
2. in breach of Article 3, enters a facility specified therein without the necessary evidence of vaccination, recovery or testing, or, as the owner of a business or facility, does not ensure pursuant to Article 3 sub-para. 1 clause 3, also in conjunction with Article 3 sub-para. 2, that the visitor, employee or volunteer presents any required evidence of vaccination, recovery or testing or, in breach of Article 3 sub-para. 1 clause 3, also in conjunction with Article 3 sub-para. 2, as an operator fails to retain their own proof of a test result for two weeks,
3. in breach of Article 4, operates a private school as defined by Art. 90 et seq. of the Bavarian Education and Training Act without fulfilling the obligations set out in Article 4 sub-para. 1 or, in breach of Article 4 sub-para. 2, enters the school grounds,
4. in breach of Article 5, operates a child day-care facility without complying with the obligations specified therein, in breach of Article 5 sub-para. 1 clause 1, also in conjunction with Article 5 sub-para. 1 clause 3, as a legal guardian fails to supply proof of a test result or makes a false assurance, or, in breach of Article 5 sub-para. 4, enters the grounds of facilities,

### **ARTICLE 8 Effective date, expiry date**

This Ordinance takes effect on 3 April 2022 and expires on 30 April 2022 at midnight.

Munich, 1 April 2022

**Bavarian State Ministry of Health and Care**

Klaus Holetschek, State Minister