

**Bayerisches Staatsministerium für Gesundheit und Pflege
Bavarian State Ministry for Health and Care**



**Enforcement of Law on Protection against Communicable Diseases
[*Infektionsschutzgesetz/IfSG*]**

Provisional Curfew due to Corona Pandemic

**Pronouncement
by the Bavarian State Ministry for Health and Care dated 23 March 2020,
Ref: Z6a-G8000-2020/122-98**

Pursuant to Section 28 Paragraph (1) Sentences 1 and 2 of the Law on Protection against Communicable Diseases [*Infektionsschutzgesetz/IfSG*] in conjunction with Section 65 Sentence 2 Number 2 of the Jurisdiction Ordinance [*Zuständigkeitsverordnung/ZustV*], the Bavarian State Ministry for Health and Care hereby issues the following:

General Decree:

1. Every individual is ordered to reduce all physical and social contracts with other persons, except for family members living in the same household, to the absolute minimum extent possible. Wherever possible, a minimum distance of 1.5m 8 [4.9 feet] must be maintained between two individuals.
2. All types of food-service establishments are no longer allowed to operate. The sale and delivery of takeaway food is permitted.
3. Visits to the following facilities are prohibited:
 - (a) Hospitals as well as preventive and rehabilitation facilities which offer equivalent medical care (facilities IAW Section 23 Paragraph (3) Numbers 1 and 3, IfSG); except for obstetric and pediatric wards for close relatives, and palliative wards and hospices.
 - (b) Inpatient care facilities within the meaning of Section 71 Paragraph (2) of the Eleventh Book of the Social Code Book XI [SGB XI].
 - (c) Facilities for disabled persons within the meaning of Section 2 Paragraph (21) of the Ninth Book of the Social Code [SGB IX] where integration assistance is provided day and night.
 - (d) Outpatient assisted living communities within the meaning of Section 2 Paragraph (2) of the Law on Nursing Apartment Quality [Pfleghausgesetz/PfleWoqG] for the provision of outpatient intensive care [IntensivpflegeWGs] must be provided IAW Section 23 Paragraph (6a) IfSG.
 - (e) Elder-Homes and residential homes for senior citizens.

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4. Departing a private residence is only permissible for a credible reason.
5. **Credible reasons include:**
 - (a) Carrying-out professional activities.
 - (b) Seeking medical and veterinary treatment (e.g. visit to doctor, medical treatments; blood draw participation are expressly allowed) and consulting other healthcare professionals (e.g. psychotherapists or physical therapists).
 - (c) Procuring of everyday consumer goods (e.g. grocery store, beverages market, pet stores, stationery stores, pharmacies, drugstores, medical supply stores, opticians, hearing-aid specialists, banks and ATMs, post office, gas station, automotive repair shops, laundry and the delivery of absentee ballots). The utilization of other services, such as a visit to the hairdresser, does not constitute an everyday need.
 - (d) Visiting life partners, the elderly, the sick or persons with impairments (not living in facilities) and the exercise of parental custody in a person's own residence.
 - (e) Accompanying persons in need of assistance and minors.
 - (f) Accompanying dying persons and funeral attendance by the close relatives only.
 - (g) Sports and outdoor exercise, however, only alone or with members of your own household and not in a group of any kind.
 - (h) Activities necessary for animal care.
6. Police are required to check compliance with the stay-at-home order. In the event of a check, the subject individual must provide a credible reason.
7. An infringement of this general decree is punishable as an administrative offense in accordance with Section 73 Paragraph (1a) Number 6 of the Law on Protection against Communicable Diseases.
8. Further instructions from the local health authorities remain unaffected hereby.
9. This general decree is immediately enforceable pursuant to Section § 28 Paragraph (3), Section 16 Paragraph (8) of the Law on Protection against Communicable Diseases.
10. This general decree becomes legally effective at 0000 hours on 21 March 2020 and will expire on 3 April 2020. Hence, the curfew restrictions will end at 2400 hours on 3 April 2020.

Reasons

The novel corona virus SARS-CoV-2 [COVID-19] presents enormous challenges for society and the health system. Worldwide, also in Germany and in Bavaria, we are facing a very dynamic and serious situation with a tremendous increase of cases within a few days. On 11 March 2020, the World Health Organization classified the spread of the virus and the resultant COVID-19 illness as a pandemic.

The overall risk to the health of the German population is currently rated as high. COVID-19 is very infectious. In particular, elderly persons and persons with pre-existing health conditions are affected by the serious course of the illness and can succumb to the illness. In light of the fact that neither vaccine nor a specific therapy are available at present, all measures must be taken to delay the further spread of the virus. The goal is to reduce the overall burden on the health system by decelerating the infection rate, to avoid peak loads, and to ensure the provision of medical care. For this reason, the state government has already initiated numerous measures.

In accordance with Section 28 Paragraph (1) Sentence 1 IfSG, the competent authority has to initiate the necessary protective measures for as long as necessary to prevent the spread of communicable diseases.

According to Section 28 Paragraph (1) Sentence 2 Half-Sentence 2 IfSG, the competent authority can require persons not to leave their current site or not to access specific sites before the necessary protective measures have been accomplished.

Itemized reasons:

Re 1:

The extensive reduction or limitation of social contacts in private and public areas make a decisive contribution to reducing the transmission of the novel COVID-19 in the population. Curfew restrictions fulfill this purpose. By decelerating the spread of the virus, the expected severe COVID-19 cases will occur over a longer period and hospital shortages can be avoided.

Re 2:

To prevent a further spread of COVID-19, a shutdown of all food-service establishments has become necessary - except for the sale of takeaway and food delivery. Even if a safe distance is maintained between patrons and tables, food-service establishments harbor a heightened COVID-19 transmittal risk which is inherent in the regular exchange of uncovered drinks and food between waiters and patrons. In addition, food service establishments are meeting places for human-beings but have a heightened risk of infection due to the constant flow of patrons. The Bavarian State Ministry of Health and Care and the Bavarian State Ministry of Family, Labor and Welfare issued a less stringent General Decree to ban all major events on 16 March 2020, Reference: 51-G8000-2020 / 122-67, amended by the pronouncement of 17 March 2020, Reference Z6a-G8000-2020 / 122-83, but this ban did not result in a reduction in the infection rate and, therefore, the closure of food-service establishments to protect the health of the population is necessary and proportionate becomes necessary as *ultima ratio*. The sale of takeaway food and food delivery can be continued. This is especially necessary for persons who cannot leave their home for valid reasons.

Re 3:

The listed facilities predominantly provide care for persons whose health would be severely endangered by this novel virus. As *ultima ratio*, visits to these facilities with such a particularly vulnerable group of persons must be prohibited. The Bavarian State Ministry of Health and Care and the Bavarian State Ministry of Family, Labor and Welfare had issued a less stringent General Decree to restrict personal visits to hospitals, nursing and disabled facilities on 13 March 2020, Ref: G51b-G8000-2020 / 122-56, amended by the pronouncement of 17 March 2020, Ref: GZ6a-G8000-2020 / 122-82, did not lead to a reduction of the infections. This decree only prohibits personal visits to these facilities, but not the access for receiving medical treatment. Apart from avoiding the influx of the virus, the restriction of visits also serves to facilitate the provision of health care. The infection risk for the medical and nursing staff will be reduced. For this reason, these measures for the itemized medical facilities also serve to maintain the healthcare capacity and are, therefore, indispensable to protect the health of the general public.

Re 4.-6:

The massive increase and rampant course of new infections show that the less stringent measures implemented by the General Decree of the Bavarian State Ministry of Health and Care and the Bavarian State Ministry for Family, Work and Social affairs of 16 March 2020, Ref: 51-G8000-2020 / 122-67, modified by pronouncement of 17 March .2020, Ref: Z6a-G8000-2020 / 122-83, in banning major events did not lead to a reduction of the infections. To the contrary, it was observed that there are still large crowds of people gathering in public places. Accordingly, as the *ultima ratio*, curfew restrictions are imperative for the containment of the spreading infections. This is not a matter of deprivation of liberty, but merely a restriction of the personal freedom of movement. For reasons of proportionality, it is still permitted to leave a private residence for valid reasons which are set forth in Section 6 above.

Re 7:

An infringement constitutes an administrative offense and is punishable with a fine up to €25,000 (Section 73 Paragraph (1a) No. 6 and Section 2 IfSG). A violation of an enforceable order pursuant to Section 28 Paragraph (1) Sentence 2 IfSG is punishable in accordance with Section 75 Paragraph (1) No. 1 IfSG.

Re 8:

Further orders from the local health authorities remain unaffected hereby.

Re 9:

The immediate enforceability is set forth in Section 28 Paragraph (3), Section 16 Paragraph (8) IfSG.

Re 10: The implementation is governed by Art. 41 Paragraph (4) Sentence 4 Bavarian Administrative Procedure Act [Bayerisches Vewaltungsverfahrensgesetz/BayVwVfG].

signed
Winfried Brechmann
Ministerialdirektorin
Director at Ministry

END OF TRANSLATION

FOR THE TRANSLATION:

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DATE: 20 March 2020*