HEALTH OFFICER ORDER NO. 23-02

ORDER OF THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA

MANDATORY MASKING OF STAFF IN SKILLED NURSING FACILITIES

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code §§ 120175, 120295; Cal. Penal Code §§ 69, 148(a)(1))

EFFECTIVE DATE: 12:01 a.m., April 3, 2023

Summary: To combat the spread of COVID-19 to the vulnerable residents of Skilled Nursing Facilities (SNFs) and to minimize the associated risk of severe COVID-19 illness and death among those residents, this Order mandates that operators of Skilled Nursing Facilities in the County of Alameda immediately implement a program to ensure that SNF Staff wear high-quality, well-fitting masks whenever they are in resident care areas or in contact with residents in the facility, regardless of vaccination status. The Health Officer will reassess the need for this Order monthly.

Background: The California Department of Public Health has announced that on April 3, 2023, it will rescind its masking orders for staff at hospitals and congregate care facilities. Although on February 28, 2023, the Alameda County Health Officer lifted the declaration of Local Health Emergency based on a decline in the daily reported COVID-19 hospitalizations year-over-year and the related decline of intensive care unit utilization and deaths in the County, COVID-19 continues to circulate in the County and the risk to vulnerable persons of severe consequences from the disease remains significant. This is particularly true of patients and residents in Skilled Nursing Facilities, who are among the most medically-fragile residents in the County. More than one quarter (29%) of the Alameda County residents who have died from COVID-19 since 2020 were SNF residents, despite representing less than 0.5% of the County population. This Order is designed to mitigate those risks and to protect the lives and health of SNF residents at a time when the impacts of recent, broad de-escalations of COVID-19 policies and resources at the state and federal level remain uncertain.

ORDER

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTION 120175, THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA (“HEALTH OFFICER”) ORDERS:

1. All Skilled Nursing Facilities (“SNFs”) in the County of Alameda must immediately implement a program to ensure that all SNF Staff wear high-quality, well-fitting masks whenever they are in patient care areas or in contact with SNF patients regardless of the Staff member’s COVID-19 vaccination status.
2. For purposes of this Order:
   
a. “Skilled Nursing Facility” or “SNF” means a health facility or a distinct part of a hospital that provides 24-hour skilled nursing and supportive care to patients.
   
b. “Staff” means SNF employees, volunteers, or contractors who provide services at the SNF, regardless of whether a particular employee, volunteer, or contractor ordinarily engages in patient care or contact.
   
c. “High-quality, well-fitting mask” means, by way of example, surgical masks or non-vented N95, KN95, and KF94 respirators. A well-fitted non-vented N95, KN95, or KF94 respirator is strongly recommended, even if not fit-tested, to provide maximum protection.
   
3. SNFs may excuse the following Staff from masking:
   
a. Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
   
b. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
   
c. Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
   
4. This Order does not require residents and visitors to wear masks, although masks remain recommended in SNFs for all residents and visitors not covered by these requirements when interacting with others.
   
5. Nothing in this Order precludes SNFs from implementing masking requirements more stringent than those described in this Order, and nothing in this Order prevents individuals not subject to this Order from wearing masks while at the SNF. Additionally, nothing in this Order excuses SNFs from complying with more stringent standards established by state or federal laws and regulations.
   
6. This Order is mandatory for all SNFs within the County of Alameda’s Local Health Jurisdiction, including those located in all incorporated cities and unincorporated areas, with the exception of those in the City of Berkeley, which maintains a separate local health jurisdiction with a separate health officer.
7. Under Government Code Sections 26602 and 41601 and Health and Safety Code Section 101029, the Health Officer requests that the Sheriff and all Chiefs of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

8. This Order shall be effective at 12:01 a.m. on April 3, 2023. The Health Officer will reassess the need for the continuation of this Order monthly. Unless expressly modified or rescinded, this Order shall remain in effect.

9. Copies of this Order shall promptly be: (1) made available at the County Administration Building at 1221 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department’s website (acphd.org); and (3) provided to any member of the public requesting a copy of this Order.

10. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

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Nicholas J. Moss, MD, MPH  March 27, 2023
Health Officer of the County of Alameda  Date