



HEALTH OFFICER ORDER

ORDER OF THE HEALTH OFFICER OF THE CITY OF BERKELEY

MANDATORY VACCINATION OR MASKING OF STAFF IN HEALTHCARE FACILITIES AND EMS WORKERS; SUSPENSION OF PRIOR HEALTH OFFICER MASKING ORDER

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))

Date Order Issued: October 12, 2023

EFFECTIVE DATE: 12:01 a.m., November 1, 2023

Summary: To combat the spread of COVID-19, Influenza (flu), and Respiratory Syncytial Virus (RSV) to vulnerable patients and residents, and to minimize the associated risk of severe illness and death among these persons, this Order requires operators of all licensed Health Care Facilities and employers of EMS workers operating within the City of Berkeley to implement a program to ensure that Staff receive Influenza and COVID-19 vaccination or, if they decline, wear high-quality, well-fitting masks whenever they are engaged in patient care activities and also whenever they are in patient care areas in a healthcare facility.

This Order will go into effect on November 1, 2023, and end on April 30, 2024, unless the Health Officer adjusts the dates based on virus surveillance data.

Background: The fall and winter of 2022-2023 saw substantial waves of RSV, flu and COVID-19, and [a similar pattern is expected this year](#). The CDC estimates that there were up to 670,000 hospitalizations and 98,000 deaths due to influenza during the 2022-23 flu season. The CDC also estimates that there were over 2 million hospitalizations and approximately 244,000 deaths due to COVID-19 during 2022. In Berkeley, COVID-19 illness caused 69 hospitalizations and 21 deaths in 2023. Respiratory viruses typically circulate and peak during the late fall and winter months.

Health Care Staff are both at risk for respiratory viruses and can transmit them to their patients and coworkers. COVID-19 is also known to spread from people who are asymptomatic or pre-symptomatic, and several studies have indicated that many health care facility Staff work while experiencing symptoms of respiratory illness. Mandatory vaccination or masking policies have been shown to increase HCW vaccination rates to above 95%. Patients in health care facilities are particularly vulnerable to illness. Young children, the pregnant, and those with chronic health conditions are at greater risk for respiratory virus-related hospitalization and death. Older adults and other people with weakened immune systems are at especially high risk and make up a large portion of Health Care Facility patients and residents.



Across California, there were over 5,400 deaths among people 65 and older with COVID-19, flu, or RSV reported as an underlying or contributing cause of death during the 2022-2023 winter respiratory virus season. Despite widespread availability of safe and effective vaccines and treatments, 87% of these deaths were due to COVID-19. In past winters, as the community burden of COVID-19 increased, COVID-19 outbreaks in Health

Care Facilities increased in frequency and size, and influenza-like illness outbreaks were common in Skilled Nursing Facilities even before the COVID-19 pandemic.

This Order requires that all Staff of EMS agencies and licensed healthcare facilities be vaccinated against both COVID-19 and Influenza or, if they decline one or both vaccinations, that they wear masks during peak respiratory illness season. Although this Order is directed to Staff, the Health Officer strongly recommends that everyone take appropriate protections based on their situation, including the following five measures: 1) following the CDC's most current COVID-19, flu, and RSV vaccine guidance; 2) wearing a well-fitted mask in appropriate settings based on personal risk factors, especially if you or someone you live with is vulnerable to the worst outcomes of COVID-19; 3) staying home whenever you feel sick in order to protect others around you and following the CDC's and the State's isolation and quarantine guidance; 4) staying aware of medications that you can use when you get sick with COVID-19, including drugs like Paxlovid that can decrease the severity of infection, especially for anyone over 50 years old or who has other risk factors; and 5) remaining aware of information about COVID-19 and other respiratory illnesses.

ORDER

UNDER THE AUTHORITY OF THE CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101475 AND 120175, THE CITY OF BERKELEY HEALTH OFFICER ORDERS:

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 § 120295; City of Berkeley Municipal Code §2.50.040.)

Vaccination or Masking Order

1. All licensed Health Care Facilities and employers of EMS workers operating within the City of Berkeley must, by November 1, 2023, implement a program to ensure that all Staff receive COVID-19 and Influenza vaccination or, if they decline, wear high-quality, well-fitting masks whenever they are engaged in patient care activities and also whenever they are in patient care areas. A written copy of the vaccination and masking program shall be made available by the Facility upon request of the Health Officer or her designee.
2. For purposes of this Order:
 - a. "Licensed Health Care Facility" means licensed General Acute Care Hospitals, Long Term Acute Care Hospitals, Psychiatric Hospitals, Outpatient Clinics,



- Skilled Nursing Facilities, Dialysis Centers, Infusion Centers, and any other Facility directed to follow this Order by the Health Officer.
- b. “Staff” means Health Care Facility employees, volunteers, contractors, and emergency responders who provide services at the Health Care Facility, regardless of whether patient and resident care or contact are ordinarily part of the Staff member’s duties. Staff also includes all EMS workers in the city of Berkeley.
 - c. “Patient care areas” mean any rooms or workspaces where patient care is routinely delivered to patients or residents, or patients under observation for possible admission, including but not limited to outpatient clinics, patient and resident rooms, radiology facilities, inpatient or ambulatory surgical suites, and emergency departments, or any other areas where Staff may come into direct contact with patients or residents routinely receiving care. Any site where EMS workers are engaging in patient care activities is covered by this order, including Emergency vehicles and other medical transport vehicles. For the purposes of this Order, nursing stations, cafeterias, hallways, charting rooms, break rooms, and offices are not considered patient care areas. Under this Order, when a facility location is not clearly a patient care area as defined in this paragraph, facility administrators have the discretion to determine the nature of that location.
 - d. “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. A scarf, ski mask, balaclava, bandana, neck gaiter, turtleneck, collar, cloth mask, or any mask that has an unfiltered one-way exhaust valve does not qualify as a face mask under this Order.
3. Health Care Facilities and employers of EMS workers may excuse the following unvaccinated Staff from masking:
- a. Persons with a documented medical condition, mental health condition, or disability that prevents wearing a mask. Health Care Facilities may determine the best way to implement such exemptions for their workforce.
 - 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. Removing a mask briefly to ensure proper communication with any patient, resident, or visitor will not be considered a violation of this Order but masks should be worn again as soon as possible.
 - 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.
 - d. Health Care Facilities shall preserve documentation of unvaccinated Staff excused from masking for the duration of this Order.



4. This Order does not require patients, residents, or visitors to be vaccinated or wear masks, although such a measure is strongly recommended in Health Care Facilities for all patients, residents, and visitors not covered by these requirements when around others. Masking is also recommended for all unvaccinated Health Care Facility Staff who work in non-patient care areas of the Facilities.
5. Nothing in this Order precludes Health Care Facilities from implementing vaccination or 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 a Health Care Facility. Additionally, nothing in this Order excuses Health Care Facilities, employers of EMS workers, or Staff from complying with more stringent standards established by state or federal laws and regulations.
6. This Order is **mandatory** for all licensed Health Care Facilities and employers of EMS workers operating within the City of Berkeley's Local Health Jurisdiction.

A. Suspension of Prior Orders

1. Suspension of Flu Masking Order

Effective October 13 2023 at 12:01 a.m., Order No. 20-16b (requiring health care workers to receive annual flu vaccinations or wear masks) is suspended until further Order of the Health Officer.

B. Additional Provisions

1. This Order shall be effective at 12:01 a.m. on November 1, 2023. Unless expressly modified or rescinded, this Order shall remain in effect until April 30, 2024.
2. The City must promptly provide copies of this Order as follows: (1) by posting on the City's website (berkeleyca.gov); by posting at Old City Hall, located at 2134 Martin Luther King Jr Way, Berkeley, California 94704; and (3) by providing to any member of the public requesting a copy.
3. 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:

Anju Goel, MD, MPH
Interim Health Officer of the City of Berkeley

October 12, 2023

Date