

## **Enforcement of the German Infection Protection Act (IfSG)**

### **Preliminary Stay-at-Home Order Decreed on Account of the Coronavirus Pandemic**

#### **Notice from the Bavarian State Ministry of Health and Care dated March 20, 2020, Reference No. Z6a-G8000-2020/122-98**

On the basis of Section 28 Subsection 1 Sentence 1 and Sentence 2 of the Infektionsschutzgesetz [*German Infection Protection Act*] (“IfSG”) in conjunction with Section 65 Sentence 2 No. 2 of the Zuständigkeitsverordnung [*Bavarian Ordinance on the Allocation of Competences*] (“ZustV”), the Bavarian State Ministry of Health and Care issues the following

#### General Decree

1. Everyone is required to restrict any physical and social contact with other human beings not living in the same household to an absolutely necessary minimum. Whenever possible, a minimum distance of 1.5 meters between any two persons must be observed.
2. Establishments of the catering industry, of any type or form whatsoever, shall be prohibited. This does not include the distribution and delivery of take-away meals.
3. It is prohibited to visit any of the following facilities:
  - a) hospitals as well as prevention and rehabilitation facilities involving medical care that is similar to the medical care offered in hospitals (institutions pursuant to Section 23 Subsection 3 No. 1 and No. 3 of the IfSG); this does not include maternity departments and children’s wards in the event of visits by the closest relatives as well as palliative care units and hospices,
  - b) institutions offering full in-patient care pursuant to Section 71 Subsection 2 of Book Eleven of the German Social Security Code (SGB XI),
  - c) facilities for people with disabilities within the meaning of Section 2 Subsection 1 of Book Nine of the German Social Security Code (SGB IX), in which services pertaining to integration assistance are provided on a 24-hour basis,
  - d) home-based assisted living group care homes within the meaning of Article 2 Subsection 3 of the Pflegewohnqualitätsgesetz [*Bavarian Act on the Regulation*

*of the Quality of Care, Assistance, and Housing for Senior Citizens and for Persons with Disabilities]* (PfleWoqG) for the purpose of out-of-hospital intensive care (intensive care residential communities), in which care services for outpatients pursuant to Section 23 Subsection 6a of the IfSG provide services, and

- e) care homes for the elderly and residential facilities for senior citizens.
4. It is prohibited to leave one's home unless valid reasons apply.
  5. Valid reasons are in particular:
    - a) pursuing professional activities,
    - b) using medical and veterinary services (e.g., visits to doctors, medical treatments, and donating blood are expressly permitted) as well as visiting members of helping professions to the extent to which this is essentially necessary for medical reasons (e.g., psychotherapists and physiotherapists),
    - c) running errands with respect to everyday consumer goods (e.g., grocery stores, beverage stores, pet supply stores, postal and mail order trade, pharmacies, drugstores, medical supply stores, optometrists/opticians, hearing aid professionals, banks and ATMs/cash-point machines, post offices, petrol/gas stations, car repair shops, dry-cleaner's/laundry services, as well as submitting postal ballots for postal voting). Using other services such as, e.g., appointments at the hairdresser's do not constitute an errand pertaining to the managing of day-to-day needs,
    - d) visiting life partners, senior citizens, people who are sick, or people with special needs (outside of an institution), and exercising custody rights in the corresponding private sphere,
    - e) accompanying people requiring assistance, or minors,
    - f) terminal care for the dying, funerals with only the most immediate family members of the deceased as attendants,
    - g) sports and exercise outdoors, however, only on one's own or together with members of one's own household, but not in a group of any kind whatsoever, and
    - h) activities relating to the caring for animals.
  6. The police are obliged to check the compliance with the Stay-at-Home Order. In the event of a check, the person concerned has to plausibly demonstrate the valid reasons.

7. Any infringement of this General Decree is punishable as a regulatory offence [*Ordnungswidrigkeit*] pursuant to Section 73 Subsection 1a No. 6 of the IfSG.
8. Any more extensive orders issued by the local health authorities shall remain unaffected.
9. This General Decree is immediately enforceable, as follows from Section 28 Subsection 3 and Section 16 Subsection 8 of the IfSG.
10. This General Decree shall enter into force on March 21, 2020, 00:00, and shall cease to apply upon the expiry of April 3, 2020. Consequently, the stay-at-home orders expire on April 3, 2020, 24:00.

#### Statement of Grounds

The novel coronavirus SARS-CoV-2 presents enormous challenges to the entire society and the health care system. Globally, nationwide within Germany, and throughout Bavaria, there exists a very dynamic and serious situation that involves a sharp increase of affected cases within just a few days. On March 11, 2020, the World Health Organization has declared that the spread of the virus, and the COVID-19 illness resulting from it, constitutes a pandemic.

The overall risk for the health of the population in Germany is currently considered to be high. COVID-19 is highly contagious. Especially people who are older and people who have pre-existing chronic health conditions may become severely ill and may die of this illness. As there is no vaccination, nor a specific therapy available at the present time, any and all measures have to be taken to delay the spread of the virus. The goal is – through the slowing down of the occurrence of infections – to reduce the overall strain on the health system, to avoid the occurrence of peak loads, and to ensure the provision of healthcare. The Staatsregierung [*State Government*] has already implemented several measures for this purpose.

Pursuant to Section 28 Subsection 1 Sentence 1 of the IfSG, the competent authority implements the necessary protective measures to the extent that and for as long as this is necessary to prevent communicable diseases from spreading.

According to Section 28 Subsection 1 Sentence 2 – second half of the sentence – of the IfSG, the competent authority may impose an obligation on persons not to leave the place where they are located, or not to enter specific locations as designated by the competent authority, until the necessary protective measures have been completed.

The reasons in detail:

As to 1.:

The far-reaching reduction and/or restriction of social contact both in the private and public sphere is a factor of decisive importance to reduce the transmission of the novel coronavirus SARS-CoV-2 within the general public. This is the purpose for which stay-at-home orders are decreed. By slowing down the spread of the virus, the severe cases of COVID-19 may be scattered over a longer period of time, and shortages of supply in the hospitals can be avoided.

As to 2.:

In order to avoid a further rapid spread of coronavirus, it is necessary to shut down any and all establishments of the catering industry, to the exception of the distribution of food for off-premises consumption/take-out meals and delivery services. Establishments of the catering industry carry an increased risk for the transmission of coronavirus, which is due to the fact that – even when a distance between the customers is kept by means of corresponding measures regarding the tables – there is a constant exchange of unpackaged beverages and meals between the waiting staff and the customers. Moreover, in their role as places for get-togethers between human beings, they constitute an increased risk with respect to contagions due to the constant fluctuation of walk-in customers. Because the more lenient measures that had been imposed so far, which are [set forth] in the General Decree on the Prohibition of Events and on Operating Bans decreed by the Bavarian State Ministry of Health and Care and the Bavarian State Ministry of Employment, Family, and Social Policy dated March 16, 2020, Reference No. 51-G8000-2020/122-67, as amended by the Notice dated March 17, 2020, Reference No. Z6a-G8000-2020/122-83, have not resulted in a reduction of the occurrence of infections, the shutdown of establishments of the catering industry is necessary and proportionate as an *ultima ratio*/last resort for the protection of the general public. The distribution of take-out meals and the operation of delivery services will be maintained. This is required especially with respect to persons who cannot leave their home even for valid reasons.

As to 3.:

With respect to the facilities that are mentioned, it is often the case that persons are being cared for in such facilities whose health would be endangered in a particularly serious way in the event of an infection with the new pathogen. For the purpose of the protection of these particularly vulnerable categories of persons, visits to such facilities must be

prohibited entirely as an *ultima ratio*/measure of last resort, because less restrictive measures that had been imposed earlier in the form of the General Decree on the Limitation of the Rights to Visits to Hospitals, Care Homes, and Homes for Persons with Disabilities of the Bavarian State Ministry of Health and Care dated March 13, 2020, Reference No. G51b-G8000-2020/122-56, as amended by the Notice dated March 17, 2020, Reference No. GZ6a-G8000-2020/122-82, have not resulted in a reduction of the occurrence of infections. Because only visits to such facilities are prohibited here, frequenting such a facility for the purpose of seeking treatment is not included. In addition to the avoidance of introducing the pathogen, the visiting ban has the added benefit of assisting the medical service. The risk that the medical staff and the assisting staff fall ill is reduced. Therefore, the measures contribute to the maintenance of the capabilities of the included medical facilities and, consequently, are also indispensable to safeguard public health.

As to 4.-6.:

Because of the sharp increase and the hitherto mostly unbridled development of new infections, it becomes apparent that the more lenient measures that had been imposed so far, which are [set forth] in the General Decree on the Prohibition of Events and on Operating Bans decreed by the Bavarian State Ministry of Health and Care and the Bavarian State Ministry of Employment, Family, and Social Policy dated March 16, 2020, Reference No. 51-G8000-2020/122-67, as amended by the Notice dated March 17, 2020, Reference No. Z6a-G8000-2020/122-83, have not resulted in a reduction of the occurrence of infections. Furthermore, there are still larger gatherings of people in public places to be witnessed. Correspondingly, stay-at-home orders are imperatively necessary as an *ultima ratio*/measure of last resort to curb the occurrence of infections. In this case, this does not constitute a deprivation of liberty, but merely a limitation of the personal freedom to come and go as one chooses. On grounds of proportionality, leaving one's home is permitted when valid reasons exist, which are listed in detail under No. 6 [*sic*]. In the event of a police check, such reasons have to be plausibly demonstrated.

As to 7.:

Any contraventions are punishable as a regulatory offence [*Ordnungswidrigkeit*] carrying a fine of up to 25,000.00 Euro (Section 73 Subsection 1a No. 6 and Subsection 2 of the IfSG). The contravention against an enforceable order pursuant to Section 28 Subsection 1 Sentence 2 of the IfSG is subject to criminal penalties pursuant to Section 75 Subsection 1 No. 1 of the IfSG.

As to 8.:

Any more extensive orders issued by the local health authorities shall remain unaffected.

As to 9.:

The immediate enforceability results from Section 28 Subsection 3, Section 16 Subsection 8 of the IfSG.

As to 10.:

The entry into force is based on Article 41 Subsection 4 Sentence 4 of the BayVwVfG [*Bayerisches Verwaltungsverfahrensgesetz, Bavarian Administrative Procedure Act*].

Signed:

Winfried Brechmann

Ministerialdirektor [*Ministerial Director*]