The State of Wisconsin

OFFICE OF THE GOVERNOR

EMERGENCY ORDER #1

Relating to Reducing Hospital Bed and Staff Shortages by Requiring Face Coverings

WHEREAS, our hospital system is on the brink of an unsustainable strain from the uncontrolled and exponentially-growing rate of COVID-19 in Wisconsin;

WHEREAS, hospitals throughout the state are strained, reporting that their intensive care units are often full and that they may no longer be able to accept new patients;

WHEREAS, the majority of hospitals, including hospitals in every region of Wisconsin, are reporting nearly every intensive care unit bed and every medical-surgical bed is full. More than a third of all hospitals in Wisconsin are operating at peak capacity and are unable to admit new patients;

WHEREAS, twenty-one percent of medical-surgical beds and thirty-two percent of intensive care unit beds are occupied by COVID-19 patients. With the large and growing influx of COVID-19 patients, there are fewer beds and resources available for people with non-COVID-19 conditions that require hospitalization;

WHEREAS, the best way to ease the dire strain on our hospital system is to decrease the number of COVID-19 patients needing hospitalization. The only tools Wisconsinites have to do this is to limit in-person gatherings, diligently wash hands, practicing physical distancing, and wear a face covering when you must be around other people outside your household;

WHEREAS, although there are promising signs of vaccines in the future, Wisconsin's hospital system is in crisis right now, and it is expected to continue to get worse. Measures to slow the infection of COVID-19 are needed now to ensure our hospitals have the capacity and staff to treat all patients;

WHEREAS, as Chief Justice John Roberts has explained, "[o]ur Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *S. Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613, (Mem)–1614 (2020) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905));

WHEREAS, Section 323.12(4)(b) of the Wisconsin Statutes authorizes the Governor to issue "such orders as he or she deems necessary for the security of persons and property" during an emergency; and

WHEREAS, based on input from state and local public health officials, medical professionals, and hospitals, I have determined that a statewide face covering requirement is necessary for the security of persons by reducing the unsustainable burden COVID-19 is causing on Wisconsin's hospitals and health care professionals.

NOW, THEREFORE, I, TONY EVERS, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the laws of this state, and specifically Section 323.12 of the Wisconsin Statutes, hereby order the following:

1. **DEFINITIONS.**

   a. "Enclosed space" means a confined space open to the public where individuals congregate, including but not limited to outdoor bars, outdoor restaurants, taxis, public transit, ride-share vehicles, and outdoor park structures.

   b. "Face covering" means a piece of cloth or other material that is worn to cover the nose and mouth completely. A "face covering" includes but is not limited to a bandana, a cloth face mask, a disposable or paper mask, a neck gaiter, or a religious face covering. A "face covering" does not include face shields, mesh masks, masks with holes or openings, or masks with vents.

   c. "Physical distancing" means maintaining at least six feet of distance from other individuals who are not members of your household or living unit.

2. **FACE COVERING REQUIRED.** Every individual, age five and older, in Wisconsin shall wear a face covering if both of the following apply:

   a. The individual is indoors or in an enclosed space, other than at a private residence; and;

   b. Another person or persons who are not members of individual's household or living unit are present in the same room or enclosed space.

   Face coverings are strongly recommended in all other settings, including outdoors when it is not possible to maintain physical distancing.

3. **EXCEPTIONS.**

   a. Individuals who are otherwise required to wear a face covering may remove the face covering in the following situations:

      i. While eating or drinking.

      ii. When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.

      iii. While obtaining a service that requires the temporary removal of the face covering, such as dental services.

      iv. While sleeping.

      v. While swimming or on duty as a lifeguard.

      vi. While a single individual is giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation for an audience, the single speaker may remove the face covering when actively speaking. While the face covering is removed, the speaker must remain at least 6 feet away from all other individuals at all times.

      vii. When engaging in work where wearing a face covering would create a risk to the individual, as determined by government safety guidelines.

viii. When necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution.

ix. When federal or state law or regulations prohibit wearing a face covering.

b. In accordance with CDC guidance, the following individuals are exempt from the face covering requirement in Section 2:

i. Children between the ages of 2 and 5 are encouraged to wear a mask when physical distancing is not possible. The CDC does not recommend masks for children under the age of 2.

ii. Individuals who have trouble breathing.

iii. Individuals who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.

iv. Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.

v. Incarcerated individuals. The Wisconsin Department of Corrections shall continue to comply with COVID-19 protocols to ensure the health and safety of its staff and individuals in its care. Local governments are strongly encouraged to continue or create COVID-19 protocols to ensure the health and safety of their staff and individuals in their care.

4. **LEGISLATURE AND JUDICIARY.** State facilities or offices under the control of the Wisconsin State Legislature or the Wisconsin Supreme Court are exempt from this Order. The Wisconsin State Legislature and the Wisconsin Supreme Court may establish guidelines for face coverings that are consistent with the specific needs of their respective branches of government.

5. **PRESERVATION OF MEDICAL SUPPLIES.** To conserve limited supplies of N95 masks and other medical-grade supplies, individuals are discouraged from using such supplies as face coverings.

6. **LOCAL ORDERS.** This Order supersedes any local order that is less restrictive. Local governments may issue orders more restrictive than this Order.

7. **ENFORCEMENT.** This order is enforceable by civil forfeiture of not more than $200. Wis. Stat. § 323.28.

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

9. **DURATION.** This Order shall enter into effect immediately. This Order shall expire on January 19, 2021, or by a subsequent superseding emergency order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twentieth day of November in the year of two thousand twenty.

Tony Evers

TONY EVERS
Governor