



TOMÁS J. ARAGÓN, MD, DrPH
Director and State Public Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

RESPONSE TO PETITION

ABSTRACT:

CDPH responds to a petition from Bradley Heller requesting regulations be adopted that would require universal masking and substantially upgraded ventilation in all healthcare settings. After careful consideration, CDPH denies the petition for the reasons discussed in this document.

BACKGROUND:

On March 4, 2020, Governor Newsom declared a State of Emergency to address the outbreak of COVID-19.¹ At the time, guidance from the federal Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS) mandated the use of personal protective equipment, including masks, by healthcare workers. Since then, mandates from CDPH in the form of Guidance Letters and Public Health Officer Orders consistently upheld mandatory mask usage in healthcare settings through the end of 2022.²

On October 17, 2022, Governor Newsom announced the COVID-19 State of Emergency would end on February 28, 2023, citing the dramatic reduction in COVID-related hospitalization and death due to the state's vaccination and public health efforts. The State of Emergency was subsequently terminated as planned by a Governor's proclamation on February 28, 2023. Shortly afterward, CDPH issued updated guidance effective April 3, 2023, eliminating mandatory masking in all healthcare settings, and recommending instead that facilities develop personalized plans "based on their community, patient population, and other facility considerations incorporating CDPH and CDC recommendations."³

SUMMARY OF REQUESTED CHANGES:

¹ <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>

² <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Translations/Use-of-Face-Coverings-Fact-Sheets--en.pdf>

³ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-for-Face-Coverings.aspx>



CDPH has been petitioned to “adopt permanent regulations that will effectively protect all Californians from being infected by airborne viruses, such as COVID-19 and the flu, when they are in healthcare settings, including, but not limited to, medical, surgical, dental, optometric, and podiatric clinics, hospitals and other health care facilities, and residential care facilities.” Specifically, petitioner requests “that CDPH adopt permanent (non-emergency) regulations that require universal masking and substantially upgraded ventilation in all healthcare settings to protect all Californians and particularly the most vulnerable Californians from airborne viruses” under its authority pursuant to Health and Safety Code sections 1225, 1275, 1569.30, 100275, and 131200.

REASONS FOR DENIAL OF THE PETITION:

1. The Petition does not present adequate justification for a universal mandate for mask usage or upgraded ventilation across all healthcare settings.

Petitioner relies on (1) text from CDPH’s website that states mask wearing and improved ventilation are “essential tools in reducing the spread of COVID-19”; (2) Quotes attributed to Katrine Wallace, epidemiologist at the University of Illinois at Chicago, that “Data from many experimental and observational studies supports the use of face masks to prevent the spread of Covid, as well as other respiratory viruses,” and “Masks work best to protect everybody when they are universally worn”; and (3) the unsourced assertion that one-way masking is insufficient because it “provides substantially less protection than universal masking” and because its effectiveness “declines the longer the wearer is exposed to infected unmasked people.”

Even if accepted as true, these claims do not justify indefinite universal mandates for mask use and upgraded ventilation in healthcare settings. If sufficient safety standards are met by less restrictive means, CDPH will not enact more restrictive protocols simply because those protocols provide marginally better protection. Petitioner’s claims do not identify why current protocols fail to provide sufficient protection to the public and therefore fail to identify the need for a universal mandate.

Moreover, current circumstances suggest that a universal mandate is not necessary. CDPH has historically relied on guidance from the CDC in determining protocols responsive to the COVID-19 pandemic. On September 23, 2022, the CDC issued guidance that discontinued its prior recommendation for universal masking in healthcare settings.⁴ This update reflects “the high levels of vaccine-and infection-induced immunity and the availability of effective treatments and prevention tools.”⁵ Similarly, prior COVID-19 mask mandates relied on the State of Emergency declared by the Governor on March 4, 2020, which has since ended.⁶ In its place, the Governor’s office implemented the SMARTER plan to address the next phase of pandemic response, reflecting significant achievements in efforts to combat the pandemic.⁷

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>

⁵ Ibid.

⁶ <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>

⁷ Ibid.

The updated CDC guidance and the discontinuation of California's State of Emergency reflect a diminished need to mandate mask usage in all healthcare settings and further show that any such mandate should not be indefinite in length. Therefore, CDPH determines that an indefinite universal mandate for masking and substantially upgraded ventilation is not necessary.

2. Expert Guidance supports a tailored approach to COVID protocols that permits flexibility and variation based on the circumstances.

CDPH also rejects the need for an indefinite universal mandate because substantial authority supports a localized assessment of the risk of infection to determine the need for mask usage over broad sweeping mandates.

As noted above, CDPH and the Governor's office rely on guidance from federal authorities including the CDC; and the CDC abandoned the universal mask mandate in healthcare settings in its most recent guidance. In its place, the CDC looks first to "community transmission" levels, and only recommends facility-wide mask usage where that transmission level is "high." CDPH guidance has incorporated this individualized look to community risk in determining the need for a mask.⁸ Similarly, previous CDC guidance recommended a flexible approach to optimize mask usage, reflecting the reality that Personal Protective Equipment such as masks may be in limited supply during surge periods.⁹ In sum, effective protocols need to reflect variation in both the demand for and supply of masks. An indefinite mask usage mandate carries none of that flexibility. A state-wide mandate for "substantially upgraded ventilation" similarly imposes a burden on facilities irrespective of each facility's needs.

The replacement of universal mandates with more tailored risk analysis shows that such broad mandates are no longer necessary, and further shows that any such mandate should not be indefinite in length.

For the reasons listed above, CDPH must deny the petition.

DEPARTMENT CONTACT PERSON

Please direct any inquiries regarding this action to:

Keith Van Wagner, Assistant Chief Counsel
Regulations, Privacy & Special Projects
California Department of Public Health
1415 L Street, Suite 500, MS 0505
Sacramento, CA 95814

AVAILABILITY OF PETITION

⁸ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-for-Face-Coverings.aspx>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>

Any interested persons may obtain a copy of the petition that is the subject of this decision by sending a request to the Department contact person listed in this notice or by emailing Regulations@cdph.ca.gov. When submitting such a request, please reference CDPH PETITION RESPONSE P-23-01 in the request.