



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ELIZABETH HERTEL
DIRECTOR

March 17, 2021

**Emergency Order under MCL 333.2253 – Requirements for Residential Care Facilities
Rescission of March 2, 2021 Order**

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to “continually and diligently endeavor to prevent disease, prolong life, and promote the public health,” and gives the Department “general supervision of the interests of the health and life of the people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like those posed by COVID-19. MCL 333.2253(1) provides that:

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

See also In re Certified Questions from the United States District Court, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); *id.* (McCormack, C.J., concurring in part and dissenting in part, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

As of March 17, 2021 the State of Michigan had a total of 612,628 confirmed cases and 15,810 deaths. The current seven-day average has increased to 143.6 cases per million people. The case rate remains 80% lower than the case rate in mid-November peak, but is now 50% higher than mid-February low. Michigan’s test positivity has also increased to 5.1% as of March 13th and is plateau or increasing in most regions as well. While metrics have decreased from all-time highs, further progress has stalled and there is concern of another spike with the presence of more infectious variants in Michigan and the United States. A high number of cases creates significant pressure on our emergency and hospital systems. Improvements in healthcare capacity have reversed and have increased 38% in the last four weeks. An average of 150 daily hospital admissions was seen in Michigan in the last week, with individuals under the age of 60 accounting for 47% of all new admissions. As of March 17th, 1,111 Michiganders were hospitalized with COVID-19 and 4.4% of all available inpatient beds were occupied by patients who had

COVID-19. The state death rate was at that time 1.4 deaths per million people and there were approximately 105 weekly deaths in Michigan attributable to COVID-19. This is an 89% decrease from the second peak, which reached 13.7 deaths per million on December 10, 2020.

Yet, new and unexpected challenges continue to arise. In early December 2020, a variant of COVID-19 known as B.1.1.7 was detected in the United Kingdom. This variant is roughly 50 to 70 percent more infectious than the more common strain. On January 16, 2021, this variant was detected in Michigan. It is anticipated that the variant, if widespread in the state, would significantly increase the rate of new cases. Additionally, the first identified case of the variant known as B.1.351 – originally detected in South Africa – was identified earlier this month in Michigan. Continued progress in controlling the virus necessitates close monitoring of cases and impacts, alongside efforts to increase the rate of vaccination. Therefore, as lower COVID-19 rates permit easing of precautions, we must continue to proceed slowly and carefully.

Even where COVID-19 does not result in death, and where our emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as “long COVID.” These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients who had few or no symptoms of COVID-19 at the time of diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, minority groups in Michigan have experienced a higher proportion of “long COVID.” The best way to prevent these complications is to prevent transmission of COVID-19.

To date, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. Indeed, the State of Michigan is part of the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of its residents 16 and older as quickly as possible. Recently, increased access to rapid tests has redefined state and federal landscape of pandemic control. Rapid tests are both efficient and reliable. They assure access to point of care testing and confidence in immediate results.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

1. Definitions.

For purposes of this Order, terms are defined as follows:

- (a) “Adult foster care facility” has the meaning as provided by section 3(4) of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.703(4).
- (b) “Appropriate PPE” means, at minimum, the Personal Protective Equipment recommended by MDHHS and the Centers for Disease Control and Prevention (CDC).
- (c) “Assisted living facility” means an unlicensed establishment that offers community-based residential care for at least three unrelated adults who are either over the age of 65 or need

assistance with activities of daily living (ADLs), including personal, supportive, and intermittent health-related services available 24-hours a day.

- (d) “Communal dining and group activities” means dining areas and group activities involving residents in facilities that house more than six individuals.
- (e) “Confirmed COVID-19 positive employee or resident” means a case of COVID-19 originating in the facility, including those involving staff or residents (“facility-onset cases”).
- (f) “Face mask” means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual’s mouth and nose.
- (g) “Home for the aged” has the meaning as provided by section 20106(3) of the Public Health Code, MCL 333.20106(3).
- (h) “Nursing home” has the meaning as provided by section 20109(1) of the Public Health Code, MCL 333.20109(1).
- (i) “Outbreak testing” is the testing of residents and staff that begins after any new case arises in a residential care facility and continues until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result.
- (j) “Principal symptoms of COVID-19” are fever, uncontrolled cough, or atypical new onset of shortness of breath or at least 2 of the following not explained by a known physical condition; loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain.
- (k) “Residential care facilities” means a nursing home, home for the aged, adult foster care facility, hospice facility, substance use disorder residential facility, or assisted living facility. It does not include independent living facilities.
- (l) “Serious or critical condition or in hospice care” includes residents enrolled in hospice services regardless of whether the resident appears to be in serious or critical condition or at the End of Life; residents receiving End of Life care who are not enrolled in hospice; residents whose wellbeing is at significant risk, based on the clinical judgment of a treating medical professional, where family visits are a potentially effective intervention; and residents who experience a significant adverse change of condition. These visits are also known and commonly referred to as “compassionate care” visits.
- (m) “End of Life” is as determined and documented by a qualified medical professional.

2. Resident and Employee Protections.

- (a) Residential care facilities (hereafter referred to as “facilities” in this order) shall comply with the Center for Medicare and Medicaid Services guidance included in [QSO-20-39-NH](#) (issued September 17, 2020 and updated March 10, 2021). Facilities shall:
 - (1) Make efforts to allow communal dining and group activities to occur for those residents who are fully recovered from a COVID-19 infection or are not in isolation or are otherwise not under observation for symptoms of COVID-19. Dining and group activities must:
 - (A) Have adequate physical distancing, at least six feet between participants.

- (B) Require participating residents to wear masks, if able, when not eating or drinking.
 - (C) Provide access to hand hygiene.
- (2) Inform employees and residents of the presence of a confirmed COVID-19 positive employee or resident as soon as reasonably possible, but no later than 12 hours after identification.
 - (3) As soon as reasonably possible, but no later than 24 hours after identification of a confirmed COVID-19 positive employee or resident:
 - (A) Inform legal guardians or healthcare proxies for all residents within the facility of the presence of a confirmed COVID-19 positive employee or resident;
 - (B) Post a notice in a visible and obvious place near the main entrance of the facility indicating the presence of a confirmed COVID-19 positive employee or resident. The notice must continue to be displayed until 14 days after the last positive COVID-19 test result for an employee or resident in the facility;
 - (C) Adopt a protocol to inform prospective residents and staff of the presence of a confirmed COVID-19 positive employee or resident. Such notification must continue until 14 days after the last positive COVID-19 test result for an employee or resident in the facility. The protocol must specify how guardians and health care proxies will be informed of the positive COVID-19 test result;
 - (D) Contact the local health department in the facility's jurisdiction to report the presence of a confirmed COVID-19 positive employee or resident; and
 - (E) Support and comply with contact tracing efforts as requested.
 - (4) Maintain accurate and current COVID-19 records in a manner consistent with MDHHS surveillance reporting guidance.
 - (5) Report to MDHHS and the applicable Local Health Department(s) all presumed positive COVID-19 cases in the facility together with any additional data when required under MDHHS guidance.
- (b) Independent Living Facilities shall:
- (1) Contact the local health department in the facility's jurisdiction to report the presence of a confirmed COVID-19 positive employee or resident; and
 - (2) Support and comply with contact tracing efforts as requested.

3. Implementation.

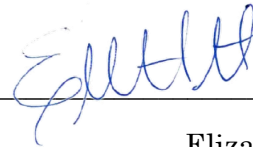
- (a) Nothing in this order modifies, limits, or abridges protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be "department

representatives” for purposes of enforcing this order and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.

- (d) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (e) The March 2, 2021 order entitled “Requirements for residential care facilities” is rescinded as of the effective date of this order. Nothing in this order shall be construed to affect any prosecution or enforcement based on conduct that occurred before the effective date of this order.
- (f) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.
- (g) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.

This Order is effective immediately.

Date: March 17, 2021



Elizabeth Hertel, Director

Michigan Department of Health and Human Services