



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

Emergency Order Under MCL 333.2253 –Temporary restrictions on entry into congregate care and juvenile justice facilities

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. There is currently no approved vaccine for this disease. On March 10, 2020, the Michigan Department of Health and Human Services (“MDHHS”) identified the first two presumptive-positive cases of COVID-19 in Michigan. Throughout the pandemic, Michigan has used a range of public health tools and guidance to contain the spread of COVID-19 and protect the public health, including via the Governor’s authority under the Emergency Management Act and the Emergency Powers of Governor Act. On Friday, October 2, 2020, the Michigan Supreme Court concluded that the Governor was not authorized by law to issue executive orders addressing COVID-19 after April 30, 2020, invalidating the executive orders on that topic.

Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove those numbers down dramatically, greatly reducing the loss of life. Although fewer than 100 new cases per day were reported in mid-June, cases have increased since that time, and recently nearly 1,000 new cases have been reported per day. To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and keep schools open as we head into the influenza season, we must not permit the spread of COVID-19 to increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. In the absence of the Governor’s emergency orders, it is necessary to issue orders under the Public Health Code addressing these topics.

Michigan law imposes on MDHHS a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. In recognition of the severe, widespread harm caused by epidemics, MDHHS has special powers, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253 (“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* (opinion of Viviano, J., concurring, at 20) (“the 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form”); see also McCormack, C.J., dissenting, at 12.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to 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.

This order, issued pursuant to MCL 333.2253, establishes visitation requirements for congregate care facilities and juvenile justice facilities, to ensure continuation of essential public health services while also providing clarity on the circumstances under which visitation is allowed in these facilities.

I therefore order that:

1. A congregate care facility or a juvenile justice facility must limit the entry of any visitors consistent with the provisions of this order.
2. A congregate care facility or a juvenile justice facility may permit entry of any visitors if it does all of the following:
 - (a) Provides information to all potential visitors on the following topics:
 - (1) Recognition of the signs and symptoms of COVID-19;
 - (2) Who to notify if they develop signs or symptoms of COVID-19 at the facility, or within 14 days of visiting the facility;
 - (3) Appropriate hand washing and sanitization techniques;
 - (4) Appropriate methods for donning and doffing masks, and face coverings; and
 - (5) Appropriate methods for containing coughs and sneezes;
 - (6) Social distancing recommendations;
 - (7) Updated information regarding conditions that increase the risk of severe complications from COVID-19 infection. Specifically, the following information must be provided: “While children have been less affected by COVID-19 compared to adults, children with certain conditions may be at increased risk for severe illness. Children who are medically complex, who have serious genetic, neurologic, metabolic disorders, and with congenital (since birth) heart disease may be at increased risk for severe illness from COVID-19. Similar to adults, children with obesity, diabetes, asthma and chronic lung disease, or immunosuppression may be at increased risk for severe illness from COVID-19.”
 - (b) Limits all visitor entry only through designated entrances that allow proper screening;
 - (c) Posts signage at any visitor entrance instructing visitors to be assessed for symptoms of COVID-19 before entry.
 - (d) Posts signage instructing persons who have symptoms of a COVID-19 infection, including, but not limited to, fever, cough, difficulty breathing or shortness of breath, sore throat, muscle pain, chills, new loss of taste or smell, nausea or vomiting, and/or diarrhea, to not enter the facility;
 - (e) Performs a health evaluation of visitors each time a visitor seeks to enter the facility, and denies entry to those visitors who do not meet the evaluation criteria. The evaluation criteria must include assessment of signs and symptoms related to a COVID-19 infection: fever $\geq 100.0^{\circ}\text{F}$, cough, difficulty breathing or shortness of breath, sore throat, muscle pain, chills, new loss of taste or smell, nausea or vomiting, and/or diarrhea;

- (f) Provides supplies for respiratory hygiene and cough etiquette, including the safe use of alcohol-based hand rub with 60-95% alcohol, tissues, and no-touch receptacles for disposal available within the facility, including intake areas, visitor entries and exits, visitation rooms, common areas, restrooms, and dining areas;
- (g) Restricts all visitation to a designated visitation room or other designated locations;
- (h) Permits visitation only as scheduled in advance during select hours and limits the number of visitors per resident to no more than 2 visitors at one time per resident;
- (i) Requires visitors to wear a mask or other face covering in all shared spaces, both indoors and outdoors unless the visitor is unable medically to tolerate a mask or other face covering. Except for limited visitation for medical purposes, or visitation with a parent, foster parent, prospective adoptive parent, or guardian of an individual who is 21 years of age or under and who is under the facility's care, all other in-person visitation of residents who have tested positive for COVID-19 should be deferred until the resident is able to meet CDC criteria for discontinuation of isolation. Any visitor who is providing necessary medical care, or is a parent, foster parent, prospective adoptive parent, or guardian to the COVID-19 positive resident who remains under active isolation, must wear all recommended personal protective equipment (PPE) appropriate for the level of contact with the resident and the nature of the tasks being performed. Those who are providing medical care for which a N-95 respirator mask is advised must be fully evaluated and fit-tested as part of a comprehensive respiratory protection program. If facilities choose to impose additional PPE requirements for visitors beyond a mask or face covering, the facility must make the visitor aware of the requirement ahead of time, and must supply the visitor with the additional PPE. Entry may not be denied based on a visitor not having the additional PPE required by the facility;
- (j) Requires all visitors to practice social distancing, staying at least 6 feet away from others, except the resident they are visiting;
- (k) Excludes visitors from resident rooms during aerosol-generating procedures or collection of respiratory specimens unless deemed necessary by facility staff for the care and well-being of the resident;
- (l) Requires residents returning from an off-campus visit to enter through the visitor entrance and be evaluated in the same way as visitors by answering screening questions and submitting to a health evaluation. Off-campus visits will be permitted only in the following circumstances:
 - (1) Off-campus visits to a parent, foster parent, or prospective adoptive parent will be permitted if the person or persons being visited have agreed in advance to abide by safety measure as recommended by the CDC to reduce exposure to COVID-19 for at least two weeks prior to the scheduled visit, and the parent, foster parent, or prospective adoptive parent does not have known exposure to COVID-19 or symptoms of COVID-19 or has received a negative test result since their last known exposure.
 - (2) Other off-campus visits in the community must be in the same region where the congregate care or juvenile justice facility is located.
- (m) Requires residents with known exposure to COVID-19, but presenting no signs or symptoms, to be quarantined in a private room for 14 days; and

- (n) Isolates residents with signs or symptoms of COVID-19 and tests them for COVID-19.
 - (o) Considers additional precautions for minimizing transmission during the visits if a resident or any visitor to that resident have a high-risk condition.
3. For purposes of this order, “congregate care facility” and “juvenile justice facility” means Child Caring Institutions and juvenile detention facilities.
 4. For purposes of this order, “visitors” means any person entering the congregate care facility for the purpose of visiting a resident for any reason.
 5. 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.
 6. 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.

This order is effective immediately, and remains in effect through October 30, 2020. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date: October 6, 2020



Robert Gordon, Director
Michigan Department of Health and Human Services