



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ELIZABETH HERTEL  
DIRECTOR

February 10, 2021

### Emergency Order under MCL 333.2253 – Mandatory Testing for Prison Staff

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.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of February 9, 2021, Michigan had seen 569,417 confirmed cases and 14,905 confirmed deaths attributable to COVID-19.

The State of Michigan presently has a seven-day average of 133 cases per million people. Test positivity was 4.4% as of February 9. While metrics have decreased from all-time highs, there remains a high rate of spread throughout the state. A high number of cases creates significant pressure on our emergency and hospital systems. Healthcare metrics continue to improve in Michigan but remain higher than what was seen prior to the second surge. An average of 145 daily hospital admissions was seen in Michigan in the last week, with individuals under the age of 60 accounting for a third of all new admissions. There are fewer than 1,200 Michiganders currently hospitalized for COVID-19 and 6.1% of all available inpatient beds are occupied by patients who have COVID-19. The state death rate is 3.9 deaths per million people and there are approximately 275 weekly deaths in Michigan attributable to COVID-19.

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.

In early December 2020, a variant of COVID-19 known as B117 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 it becomes widespread in the state, will significantly increase the rate of new cases.

COVID-19 can spread quickly in crowded settings, especially congregate living settings and indoor settings where physical distancing cannot be maintained, such as prisons. COVID-19 outbreaks in prisons not only create severe risks for prisoners and staff, but also create a significant risk of COVID-19 spread among the broader community.

Additional response measures, including identification and isolation of prison staff affected by COVID-19, are essential to control the pandemic. Prison staff may be a significant vector for COVID-19 to enter a prison facility. It is therefore imperative that staff in prisons with positive cases be tested for COVID-19 and that suspected and confirmed cases are reported quickly to public health officials. The timely reporting of this information enables MDHHS and local health departments to take appropriate public health action to ameliorate the effect of an outbreak, take any other necessary action to prevent the spread of the virus and to protect the health and safety of staff, prisoners, and the community. On August 19, 2020, MDHHS issued an order to require testing for prison staff to reduce the transmission of COVID-19 between prison staff, prisoners, and the community.

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 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.**

- (a) “Outbreak of special concern” means an outbreak of COVID-19 that, in the judgment of MDHHS, poses especially great risk to public health. This includes, but is not limited to, outbreaks resulting from COVID-19 variants.
- (b) “Prisons” means correctional facilities operated by the Michigan Department of Corrections.
- (c) “Staff” means Michigan Department of Corrections employees and contractors, and, for purposes of Detroit Detention Center, includes Detroit Police Department employees.

**2. Outbreaks of special concern.** Upon notification by MDHHS that an outbreak at a prison is an outbreak of special concern, the Michigan Department of Corrections (“MDOC”) must adopt testing and infection control procedures provided by MDHHS until directed otherwise by MDHHS.

- (a) These procedures include:

- (1) Testing all staff at the facility where the outbreak of special concern has been declared. Testing must be performed daily for at least 14 days following the notification.
- (2) Excluding from work staff who do not receive a test when required to get tested.
- (3) Excluding from work staff who are found to have COVID-19 until they meet all return to work criteria established by the Centers for Disease Control and Prevention.

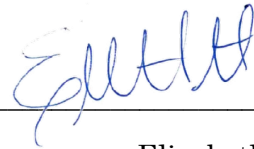
(b) For the duration of an outbreak of special concern at a prison, procedures provided by MDHHS supersede procedures required under the August 19, 2020, order entitled Mandatory Testing for Prison Staff at that prison.

### 3. **Implementation.**

- (a) 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 takes effect immediately and remains in effect until lifted.

Date: February 10, 2021



---

Elizabeth Hertel, Director

Michigan Department of Health and Human Services