



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ELIZABETH HERTEL  
DIRECTOR

**February 2, 2021**

**Emergency Order under MCL 333.2253 –Administration of COVID-19 Tests**

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). MDHHS and local health departments “[h]ave powers necessary or appropriate to perform the duties and exercise the powers” invested in those agencies. MCL 333.2221(g), MCL 333.2433(f). 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 addition to the broad powers noted above, 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 January 27, 2021, Michigan had seen 554,237 confirmed cases and 14,411 confirmed deaths attributable to COVID-19. 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 daily case numbers dramatically down to fewer than 200 confirmed cases per day in mid-June, greatly

reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. New cases peaked at over 10,000 cases per day in mid-November, followed by increases in COVID-19 hospitalizations and deaths.

Testing is one of the most critical steps to guide public health mitigation efforts. The State of Michigan presently conducts over 36,000 COVID-19 tests daily, and the weekly average is 3,698.9 tests per million residents. Test positivity was 6.1% as of January 27, one and a half times higher than the positivity rate in early October. The seven-day average case rate is 117.7 cases per million people, which is two times higher than on October 1, but nearly 75% lower than the case rate in mid-November. 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. An average of 175 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. Testing is an important tool in identifying and thereby mitigating the spread of COVID-19 and is of utmost importance.

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 establish procedures to permit certain physicians to issue standing orders for CLIA-waived, FDA-authorized SARS-CoV-2 tests. This will allow such tests to be used at locations that do not have medical staff, thereby increasing access to COVID-19 testing. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

**1. Definitions.**

- (a) “Authorized physician” means the Chief Medical Executive, a Health officer, or a Medical director who is a physician licensed to practice medicine in the State of Michigan;
- (b) “Chief Medical Executive” means that term as used in MCL 333.26369;
- (c) “Health officer” means that term as defined Rule 325.13001(b) of the Michigan Administrative Code;
- (d) “Medical director” means that term as defined by Rule 325.13001(d) of the Michigan Administrative Code;

**2. Ordering of tests.**

- (a) An Authorized Physician may issue a standing order for any CLIA-waived, FDA-authorized SARS-CoV-2 tests that has received emergency use authorization for COVID-19.

**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 rescinded.

Date: February 2, 2021



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Elizabeth Hertel, Director

Michigan Department of Health and Human Services