

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CREATING A SCHEDULE OF FINES FOR
VIOLATION OF EMERGENCY ORDERS UNDER MCL 333.2253
EMERGENCY RULES

Filed with the secretary of state on October 20, 2020

These rules take effect upon filing with the secretary of state and shall remain in effect for 6 months.

(By authority conferred on the department of health and human services by sections 2221, 2226, 2233, 2253, and 2262 of the public health code, 1978 PA 368, MCL 333.2221, 333.2226, 333.2233, 333.2253, and 333.2262, section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248, and Executive Reorganization Order No. 2015-1, MCL 400.227)

FINDING OF EMERGENCY

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. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic. 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 to issue executive orders addressing COVID-19 after April 30, 2020.

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 prevent spread in schools 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 executive orders, it is necessary to issue orders under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, addressing these topics.

October 14, 2020

Section 2221 of the public health code, 1978 PA 368, MCL 333.2221, imposes on 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.” Under section 2226(d) of the public health code, 1978 PA 368, MCL 333.2226, 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.”

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 that posed by COVID-19. Section 2253(1) of the public health code, 1978 PA 368, MCL 333.2253, provides that “[i]f 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*, 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.”); see also *id.* (McCormack, C.J., dissenting, 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 instituting mitigating measures like face coverings, to prevent ill or infected persons from infecting others.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have issued orders pursuant to section 2253 of the public health code, 1978 PA 368, MCL 333.2253, concluding that the COVID-19 pandemic continues to constitute an epidemic in Michigan, and 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. Current trends in the spread of COVID-19 suggest that the issuance of further epidemic orders may be necessary. Ensuring compliance with these orders requires identifying appropriate enforcement methods.

The MDHHS has authority to create a schedule of civil monetary penalties under section 2262(1) of the public health code, 1978 PA 368, MCL 333.2262, and would, under normal circumstances, follow the standard rulemaking process, including notice and participation, provided for in the Michigan administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328. Here, if the standard rulemaking process were followed, monetary civil penalties would not go into effect until well after they could provide useful deterrent measures. The resulting delay would result in less compliance with the Emergency Order, contribute to the spread of COVID-19, and exacerbate the harm to the public health. I therefore find that preservation of the public health, safety, and welfare requires promulgation of emergency rules

under section 48 of the APA, MCL 24.248, to create a schedule of civil monetary penalties under the Director’s authority in section 2262(1) of the public health code, 1978 PA 368, MCL 333.2262.

Rules to Enforce Emergency Orders Under MCL 333.2253.

Rule 1. Violations and penalty.

(1) A violation of the October 9, 2020, Emergency Order, entitled “Emergency Order Under MCL 333.2253 – Gathering Prohibition and Face Covering Order,” or any amendment of that order, is subject to a penalty of up to \$1,000 for each violation or day that a violation continues.

(2) Neither a place of religious worship nor its owner is subject to penalty under subrule (1) of this rule for allowing religious worship at such place. No individual is subject to penalty under subrule (1) of this rule for engaging in religious worship at a place of religious worship.

Rule 2. Prospective application.

(1) A violation of an epidemic order issued under section 2253 of the public health code, 1978 PA 368, MCL 333.2253, for the purpose of addressing COVID-19 is subject to a penalty of up to \$1,000 for each violation or day that a violation continues.

(2) Neither a place of religious worship nor its owner is subject to penalty under subrule (1) of this rule for allowing religious worship at such place. No individual is subject to penalty under subrule (1) of this rule for engaging in religious worship at a place of religious worship.

Rule 3. Severability.

(1) If any provision of these rules 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 these rules.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES




Robert Gordon
Director

October 16, 2020

Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Health and Human Services that circumstances creating an emergency have occurred and that preservation of the public health, safety, and welfare requires promulgation of the above rules.



10/19/2020

Honorable Gretchen Whitmer
Governor

Date

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Health and Human Services, dated October 14, 2020, entitled "Creating a Schedule of Fines for Violation of Emergency Orders Under MCL 333.2253 Emergency Rules." I approve the rules as to form, classification, and arrangement.

Dated: October 14, 2020

LEGISLATIVE SERVICE BUREAU

By



Elizabeth R. Edberg,
Legal Counsel



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached **emergency administrative rules**, dated October 14, 2020 in which the Department of Health and Human Services proposes to promulgate emergency rules entitled “**Creating a Schedule of Fines for Violation of Emergency Orders Under MCL 333.2253, Emergency Rules.**”

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: October 15, 2020

Michigan Office of Administrative Hearings and Rules

By: 

Katie Wienczewski,
Attorney