



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ELIZABETH HERTEL
DIRECTOR

January 13, 2022

Emergency Order under MCL 333.2253 – Requirements for Prisons

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 is easily spread from person to person. COVID-19 spreads primarily through respiratory aerosol and droplets, 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 Jan 7, 2022, Michigan has seen a total of 1,636,611 confirmed cases and 27,822 confirmed deaths attributable to COVID-19. Through December 31, 2021, the seven-day average rates in the State of Michigan were 1,139.3 cases per million people and 7.3 daily deaths per million people. As of January 5, 2022, the weekly average positivity rate was 32.0%, and the current number of COVID-19 cases detected per day in Michigan is above 13,000. As of January 7, 2022, there are 4,412 Michiganders hospitalized with COVID-19. As of January 7, 2022, 63.8% of Michigan residents have received at least one dose of a COVID-19 vaccine, and 68.6% of Michigan Department of Corrections (“MDOC”) inmates are fully vaccinated.

The Omicron variant of COVID-19, first reported by South Africa on November 24, 2021, spreads much more rapidly than prior variants of COVID-19. Omicron is more readily able to evade immunity from both vaccination and infection, significantly increasing the number of individuals who may experience severe illness, hospitalization, and death for persons who are inadequately immunized. This makes delivery of

additional doses of the COVID-19 vaccines even more important. Omicron was first detected in Michigan on December 1, 2021. Omicron reached Michigan during a period of high case counts and stretched hospital resources driven by the Delta variant. In addition to COVID-19, Michigan is experiencing an uptick in cases of other respiratory illnesses, including influenza and respiratory syncytial virus. The confluence of these sharp increases in respiratory infections is putting significant strain on Michigan's emergency and hospital systems.

Recent estimates suggest that roughly half of 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 last for months and be disabling. In some cases, these long-term symptoms can 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.

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 inmates and staff, but also create a significant risk of COVID-19 spread among the broader community. It is therefore necessary to require that testing continue to be performed in prisons and that testing be required prior to entering the facility as a new employee or transferred inmate.

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 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) "Asymptomatic" means a person who is not experiencing the principal symptoms of COVID-19.
- (b) "Outbreak of special concern" means an outbreak of COVID-19 that, in the judgment of MDHHS's director or designee, poses especially great risk to public health. This includes, but is not limited to, outbreaks resulting from COVID-19 variants.
- (c) "Principal symptoms of COVID-19" means that term as defined by the COVID-19 Employment Rights Act, MCL 419.401(j).
- (d) "Prison" means a correctional facility operated by MDOC.
- (e) "Staff members" means MDOC employees and contractors, and, for purposes of the Detroit Detention Center, includes Detroit Police Department employees who work within the physical boundaries of a prison or come into contact with inmates while on the job.
- (f) "Symptomatic" means a person who is experiencing the principal symptoms of COVID-19.
- (g) "Testing" means one of the following:
 - (1) RT-PCR diagnostic tests that seek to identify viral RNA, have received Emergency Use Authorization from the FDA, and are completed by a laboratory of moderate or

high complexity under the Clinical Laboratory Improvement Amendments (“CLIA”);
or

- (2) antigen diagnostic tests that have received Emergency Use Authorization from the FDA and are used in outbreak settings on symptomatic or asymptomatic individuals. Testing does not include tests that are considered non-diagnostic, including serology, antibody, or other blood tests.

2. **Testing of staff members and inmates.** Subject to the availability of testing supplies as determined by the Director of MDHHS, MDOC must adopt testing protocols for staff members and inmates as follows:

(a) Test all persons – regardless of their vaccination status – if they:

- (1) were recently exposed to someone with suspected or confirmed COVID-19;
- (2) exhibit the principal symptoms of COVID-19;
- (3) are a newly hired staff member and scheduled to begin work within 48 hours; and/or
- (4) are otherwise required to test under this Order.

3. **Transmission prevention protocols.**

(a) MDOC must take appropriate measures to prevent the spread of COVID-19 consistent with relevant MDHHS or CDC guidance, as directed by MDHHS’s director or designee.

4. **Outbreaks of special concern.**

(a) Upon notification by MDHHS that an outbreak at a prison is an outbreak of special concern, MDOC must adopt and implement testing and infection control procedures provided by MDHHS until directed otherwise by MDHHS. These procedures include, but are not limited to, the following:

- (1) MDOC must identify all staff members and inmates who experienced a known or suspected exposure throughout the facility where the outbreak of special concern has been declared; such persons must be tested daily for at least 14 days following MDHHS’s outbreak notification.
- (2) Exclude staff members and inmates from work consistent with MDHHS or CDC guidance, as directed by MDHHS’s director or designee.

(b) To the extent that MDHHS’s procedures provided to address the outbreak of special concern are inconsistent with requirements set forth in this Order, the provided MDHHS procedures supersede.

5. **Transfers to prisons.**

- (a) In order to prevent the spread of COVID-19, MDOC must ensure that all inmates entering an MDOC facility are tested at least once within 48 hours prior to being transferred to an MDOC facility. The test results must be received and reviewed by MDOC prior to intake.
- (b) Where testing under subsection (a) reveals that an inmate is infected with COVID-19, MDOC must not accept transfer of that inmate for 10 days following the date of the positive test or until the inmate is no longer symptomatic, whichever is later. However, MDOC may

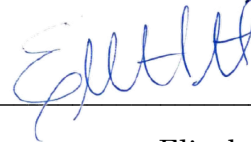
accept transfer of the inmate where the transferring entity and MDOC agree that the transferring entity would be unable to properly isolate the inmate.

6. 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. The order entitled "Requirements for Prisons," dated June 25, 2021, is rescinded.

Date: January 13, 2022



Elizabeth Hertel, Director

Michigan Department of Health and Human Services