



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ROBERT GORDON
DIRECTOR

January 13, 2021

Emergency Order under MCL 333.2253 –Requirements for Hospitals, Laboratories and Health Professionals and Rescission of March 23, 2020 Order

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 public health,” and gives the Department “general supervision of the interests of health and life of 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. Recently, the U.S. Food and Drug Administration issued emergency use authorizations for two vaccines for the prevention of COVID-19. 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 “[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.”); *id.* (McCormack, C.J., dissenting, at 12). Ensuring continuation of essential public health services and enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires the collection of data regarding the vaccination for and the spread of COVID-19 from physicians, hospitals, and laboratories to inform the state’s response.

Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases reaching nearly 2,000 per day in late March 2020. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to less than 200 confirmed cases per day in mid-June 2020, greatly reducing the loss of life. Beginning in October 2020, Michigan again experienced an exponential growth in cases. Cases have decreased from November 2020’s record highs but remain at elevated levels, and recently an average of over 2,500 new cases have been reported per day. As of January 12, 2021, Michigan had seen 525,612 confirmed cases and 13,501 confirmed deaths attributable to COVID-19. Case positivity rates, which were below 5% in September 2020, now average around 10% in January 2021. Approximately ninety percent of deaths are among those over the age of 60, and 12.1% of all available inpatient beds are occupied by patients who have COVID-19. To ensure continuation of essential public health services, we must not permit the spread of COVID-19 to increase. This necessitates continued measures to condition the gathering of individuals upon certain precautions being put in effect, including the ability to identify and isolate cases in order to reduce the spread of the virus.

Based on the authority of MDHHS, it is necessary to issue orders under the Public Health Code to control the COVID-19 epidemic.

On March 23, 2020, MDHHS issued an order to require reporting of COVID-19 data by physicians, hospitals, and laboratories. As the state's response to COVID-19 has developed, the needs for data reporting have grown and changed. More vaccines are expected to be approved for use in the coming weeks, and it is now necessary to amend the order to provide for the reporting of vaccine administration.

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. Clinical Laboratory Improvement Amendment (CLIA)-certified facilities, including CLIA certificate waiver facilities, in the state of Michigan that process tests for COVID-19 must prioritize sampling and testing for COVID-19 in the manner instructed by the Department. Instructions can be found attached to this order, and may be updated from time to time.
2. Physicians and other health professionals who collect specimens for testing of COVID-19 must label specimens in the manner instructed by the Department. Lab requisitions forms must also include patient information as instructed by the Department. Instructions can be found attached to this order, and may be updated from time to time.
3. Physicians and other health professionals who administer a vaccine for COVID-19 must document that vaccination in the Michigan Care Improvement registry (MCIR). Instructions can be found attached to this order, and may be updated from time to time.
4. Hospitals in the state of Michigan must abide by the Department's instructions on reporting of information related to the COVID-19 response. Instructions can be found attached to this order, and may be updated from time to time.
5. Implementation.
 - a. Nothing in this order should be taken to modify, limit, or abridge protections provided by state or federal law for a person with a disability.
 - b. Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
 - c. 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.
 - d. The March 23, 2020 order entitled Emergency Order Pursuant to MCL 333.2253 - Instructions to Hospitals, Laboratories, and Health Professionals related to reporting COVID-19 testing and other data is rescinded. Nothing in this order shall be construed to affect any prosecution based on conduct that occurred before the effective date of this order.
 - e. Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.
 - f. 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 is effective immediately and remains in effect until rescinded.

Date: January 13, 2021

A handwritten signature in cursive script that reads "Robert Gordon".

Robert Gordon, Director
Michigan Department of Health and Human Services