



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ELIZABETH HERTEL  
DIRECTOR

**June 11, 2021**

**Order Under MCL 333.2253  
Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers  
Rescission of August 3, 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 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. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of June 9, 2021, Michigan has 891,314 confirmed cases and 19,439 confirmed deaths attributable to COVID-19.

COVID-19 can spread quickly in crowded settings, especially congregate living settings and indoor settings without social distancing. Throughout the pandemic, substantial outbreaks have occurred in migrant housing camps and food and beverage manufacturing or processing facilities, to tragic effect. These outbreaks not only create severe risks for workers but also create a significant risk of COVID-19 spread among the broader community and may create risks for the food supply chain as well.

Even where COVID-19 does not result in death, and where Michigan’s 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 with few or no symptoms of COVID-19 at the time of diagnosis. A study published on April 6 in the medical journal *The Lancet* indicates that COVID-19 has been associated with a significantly increased risk of neurological and psychiatric disorders in the 6 months after a diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, racial and ethnic 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.

Since December 11, 2020, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. Michigan is now participating in the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of Michigan residents 16 years of age and older as quickly as possible. As of June 9, 59.9% of Michigan residents 16 and older have received at least one dose of COVID-19 vaccine. And an increasing number and volume of therapeutics are available, such as monoclonal antibodies, which can help to reduce the severity of COVID-19 cases.

New and unexpected challenges continue to arise: in early December 2020, a variant of COVID-19 known as B.1.1.7 was detected in the United Kingdom. According to the Centers for Disease Control and Prevention (“CDC”), this variant is roughly 50 percent more infectious than the original strain. On January 16, 2021, this variant was detected in Michigan. B.1.1.7 is currently the dominant strain of COVID-19 in Michigan and the United States. Michigan has also detected cases of variants B.1.351, P.1, and B.1.427/B.1.429, which experts continue to study and monitor closely. This further complicates the battle against COVID-19.

On May 13, 2021, the CDC released guidance indicating the fully vaccinated persons need not wear a mask in most settings, regardless of whether indoors or outdoors. CDC indicated that fully vaccinated persons are at low risk of experiencing symptomatic or severe COVID-19 infection, and pose a reduced risk of transmitting COVID-19 to others. Additionally, recent studies, including a study published in *The Journal of Infectious Diseases*, confirm that transmission of COVID-19 outdoors is exceedingly rare.

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 have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. 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. “Agricultural” means work involving the handling of plants or animals that are destined for consumption. This term includes the planting, raising, picking, and packing of fruit and vegetables, and includes the husbandry, rearing, caretaking, and culling of livestock. This term does not involve the preparation of foodstuffs immediately prior to consumption (for example, cooking of vegetables or meat, assembling of ingredients), or the processing of previously culled animals (for example, piecing out chicken, grinding of beef into sausage).

- b. “Close contact” or “exposure” means being within 2 meters of an infected person for at least 15 minutes within a 24-hour period starting from 2 days before illness onset (or, for asymptomatic cases 2 days prior to positive specimen collection) until the time the patient is isolated.
- c. “Employer” means:
  - 1. All employers of migrant agriculture workers, including H-2A workers.
  - 2. All employers of seasonal agriculture workers.
  - 3. All owners and operators of meat, poultry, and egg processing plants.
  - 4. All owners and operators of agricultural operations.
- d. "Face mask" means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual's mouth and nose.
- e. “Fully vaccinated” means a person who has received their second dose in a 2-dose series (Pfizer-BioNTech or Moderna) plus at least two weeks or a person who has received a single-dose vaccine (Johnson and Johnson (J&J)/Janssen) plus at least two weeks. Vaccination status can be verified by:
  - i. An employer’s own record reflecting a resident or worker’s receipt of vaccination dose(s) through onsite vaccination events; or
  - ii. Michigan Care Improvement Registry (MCIR) or other official immunization record from a local health department, hospital, pharmacy, or health system (including individual doctor’s office) that includes the name, date of birth, medical record number, or other unique identifiers to link the record to the vaccinated resident or worker; or
  - iii. A resident or worker’s presentation of a valid CDC vaccination card.
- f. “Housing operators” means owners and operators of migrant housing camps licensed by the Michigan Department of Agriculture and Rural Development (MDARD) under Part 124 of the Public Health Code.
- g. “Migrant agriculture worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his or her permanent place of residence, including H-2A workers.
- h. “Newly arriving resident” means persons who arrive to a migrant housing camp for the first time or persons who return to the camp after an absence of over two weeks.
- i. “On site” means on property owned or operated by an agricultural employer.
- j. “Principal symptoms of COVID-19” means at least 1 of fever, uncontrolled cough, or atypical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(j) of 2020 PA 339, this definition represents the latest medical guidance, and serves as the controlling definition.
- k. “Seasonal agriculture worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his or her permanent place of residence.

1. “Testing” means: Diagnostic tests that seek to identify viral RNA, have received Emergency Use Authorization and/or approval from the Food and Drug Administration, and are completed by a laboratory of moderate or high complexity under the Clinical Laboratory Improvement Amendments (“CLIA”), or Antigen diagnostic tests that have received Emergency Use Authorization from the Food and Drug Administration and are used consistent with CDC guidance.
2. Employers and housing operators in certain agricultural settings, as defined herein, must provide diagnostic testing for COVID-19 to workers or residents and adopt infection prevention measures as follows:
  - a. Housing operators must:
    - i. Provide testing for any housing resident exhibiting the principal symptoms of COVID-19 or suspected exposure to COVID-19, regardless of that individual’s vaccination status.
    - ii. Provide testing for all newly arriving residents within 48 hours after arrival unless the resident is fully vaccinated and is not exhibiting the principal symptoms of COVID-19 or has already been tested in the 72 hours before arrival.
    - iii. To the greatest extent possible, house newly arriving residents in a separate living unit from current residents for the number of days as directed by the CDC, currently 14 days after arrival, unless they are fully vaccinated.
    - iv. If housing in a separate living unit cannot be accomplished, newly arriving residents, regardless of vaccination status, should wear a face mask at all times during the first 14 days after arrival, or the number of days as directed by the CDC if different, including in dwelling units and after work hours, except when eating, drinking, or performing personal hygiene activities or if the resident cannot medically tolerate a face mask.
    - v. Provide a second test to newly arriving residents 10 – 14 days after arrival, unless they are fully vaccinated.
  - b. All employers, as defined above, with over 20 workers on site at a time (not including the employer’s family members) must:
    - i. Provide testing for any worker exhibiting the principal symptoms of COVID-19 or who has suspected exposure to COVID-19, regardless of that individual’s vaccination status, and
    - ii. Provide testing for all new workers prior to beginning work unless they are fully vaccinated and not exhibiting the principal symptoms of COVID-19.
  - c. Housing operators and employers may agree by mutual consent for an employer to be responsible for complying with the requirements in section 2(a)(i.– iv.), where more practicable in the environment. Such agreements must be in writing.
  - d. If an individual is subject to multiple testing requirements under sections 2(a) and 2(b), an employer and housing operator may utilize one test and a documented testing result to fulfill multiple testing requirements for the same period of time. Employers must take primary

responsibility for testing in this instance, unless the housing operator agrees to conduct testing by mutual consent in writing.

- e. Employers and housing operators must provide testing to individuals ages thirteen and over. Youth under the age of thirteen are exempt from the testing requirements in this section.
- f. Employers and housing operators are responsible for arranging testing for workers and residents as described in this order, including specimen collection from workers, laboratory processing of the specimens, and ensuring that results are reported to state and local public health authorities. Employers and housing operators may contract with occupational health firms, medical providers, laboratories, or other vendors to complete testing as needed. Any of the responsibilities of employers or housing operators under this order may also be completed by their designees if they have contracted with a capable entity to provide that service. These contracts must be in writing.
- g. Employers, housing operators, or medical providers conducting testing must provide information about the test and the consequence of not testing in the individual's preferred language. Consent or assent must be obtained from each individual to conduct the test. Employers or housing operators must not pressure, intimidate, or otherwise coerce individuals to decline testing.
- h. Workers who are not fully vaccinated and who fall under the testing requirement and decline testing may not conduct work and, if living in a licensed migrant housing camp, must be housed in isolation housing consistent with social distancing and infection prevention measures. The worker must be informed of these requirements in the worker's preferred language. These measures must continue until the individual is tested and receives a documented negative result, or until the worker has been isolated without exhibiting the principal symptoms of COVID-19 for at least 14 days.

Employers and housing operators are responsible in the first instance for financial costs resulting from testing, though they or their designee may seek reimbursement from health insurance where applicable and may seek state assistance to conduct testing as described in section 2(i). Employers and housing operators must not pass costs along to workers, including costs uncovered by health insurance, whether in the form of direct charges or indirect charges, fees, compensation changes, or other financial means.

- i. Employers and housing operators facing challenges arranging testing may seek assistance to conduct testing as follows:
  - i. Employers and housing operators seeking assistance may submit a request for testing assistance to MDHHS online via [COVID Tests/Support Request \(office.com\)](#). For onsite testing support, they should choose the option for Tests and Staff Support. To order antigen test kits to perform their own testing, they should choose the option for Tests Only. Employers and housing operators with questions or requiring assistance may email MDHHS at [MDHHS-Migrant-Affairs@michigan.gov](mailto:MDHHS-Migrant-Affairs@michigan.gov);
  - ii. MDHHS may direct requestors to testing resources available through medical providers and in the community.
  - iii. The State of Michigan will provide testing support as capacity allows. The State retains sole discretion to determine whether to fulfill requests for assistance.

- j. Employers and housing operators that conduct testing must follow MDHHS reporting requirements for COVID-19 diagnostic testing.
  - k. Employers, housing operators, or their designees must report test results to the patient.
  - l. Employers and housing operators must maintain records of testing conducted for one year and comply with any applicable confidentiality laws. MDARD may review such records and compliance with this order during any inspection, licensing renewal, or at its discretion. MDHHS may review such records at its discretion.
3. Employers and housing operators subject to these testing requirements, as defined in section 2, must take the following steps when a worker or resident tests positive for COVID-19 or is exposed to the virus:
- a. Following a positive test of a worker, employers must take all precautions in accordance with relevant guidance from the CDC to prevent transmission of the COVID-19 virus. Relevant interim guidance from CDC includes “Guidance for Manufacturing Workers and Employers ([link](#))”, “Guidance for Meat and Poultry Processing Workers and Employers ([link](#))”, “Interim Guidance for Businesses and Employers Responding to COVID-19 ([link](#))” and “Interim Guidance for Agricultural Workers and Employers ([link](#))”. These guidance materials include information on risk assessment, prevention and risk reduction, planning, worker and employer education and training, screening and monitoring, PPE, cleaning and disinfection, and other relevant topics.
  - b. Employers must exclude workers with COVID-19 from work until they have met all return-to-work criteria established by the COVID-19 Employment Rights Act, PA 238 of 2020, MCL 419.401 *et seq.* Employers must maintain confidentiality of a worker’s test result and not identify them, as required by the Americans with Disabilities Act (ADA).
  - c. Employers must also exclude from work those unvaccinated workers with known exposure to persons with COVID-19 (i.e., close contact) for a prolonged duration (15 minutes or over) for 14 calendar days, or the number of days as directed by the CDC, if different. Employers must maintain confidentiality of a worker’s test result and not identify them to fellow workers, as required by the (ADA).
  - d. Employers and housing operators must make reasonable efforts to connect individuals who test positive to state and local resources available to meet their basic needs including direct support, food, housing and personal care products.
  - e. Employers and housing operators must, within 24 hours of either becoming aware of or receiving notice that an employee has tested positive for COVID-19, notify the local health department and the MDHHS Office of Migrant Affairs at [MDHHS-Migrant-Affairs@michigan.gov](mailto:MDHHS-Migrant-Affairs@michigan.gov). These notifications will allow public health departments to appropriately implement a public health response and to assist with supports for workers.
  - f. Employers and housing operators must fully and actively cooperate with the local health department and MDHHS to identify and mitigate the effects of COVID-19 among workers.
4. Employers and housing operators must follow all MDHHS orders relating to face masks and gatherings, as applicable.
5. Federally Qualified Health Centers and other persons or entities that perform testing consistent with this

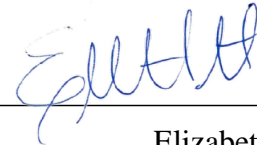
order must provide positive results of that testing to the local health department and the MDHHS Office of Migrant Affairs at [MDHHS-Migrant-Affairs@michigan.gov](mailto:MDHHS-Migrant-Affairs@michigan.gov) within 24 hours of receipt.

6. 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.
7. MDHHS will refer any known violation of this order to MDARD, and MDARD may refer to MDHHS violations of this order. This order does not limit or hinder MDARD's authority and discretion related to its own authority to pursue additional enforcement actions as it determines appropriate.
8. Agricultural worker or authorized worker representatives (e.g., labor organizations) with concerns about occupational safety or health hazards may utilize the complaint process of the Michigan Occupational Health and Safety Administration. Complaints are accepted online at [https://www.michigan.gov/leo/0,5863,7-336-78421\\_11407-93835--,00.html](https://www.michigan.gov/leo/0,5863,7-336-78421_11407-93835--,00.html), or in emergency situations, complaints may be filed by phone at 800-866-4674.
9. 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.
10. The order entitled "Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers" issued on August 3, 2020, is rescinded. Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.

This order is effective immediately and remains in effect until rescinded.

This order was amended on June 16, 2021, to add section 10.

Date: June 11, 2021



---

Elizabeth Hertel, Director  
Michigan Department of Health and Human Services

#### ATTACHMENTS

[COVID-19 Employment Rights, Act 238 of 2020, Act 238 of 2020](#)

[Pandemic Public Health Measures in Migrant Agricultural Work Housing Emergency Rules](#)

[Revised Reporting Requirments 3.25.21 FINAL 720872 7.pdf \(michigan.gov\)](#)

[MDHHS Face Mask Recommendations, May 20, 2021](#)