



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ELIZABETH HERTEL
DIRECTOR

January 20, 2022

Emergency Order under MCL 333.2253 – Nursing Home Vaccine 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).

SARS-CoV-2 (“COVID-19”) is a respiratory disease that can result in serious illness or death. It is caused by a strain of coronavirus not identified in humans prior to 2019 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 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 14, 2022, Michigan had seen a total of 1,746,707 confirmed cases and 28,479 confirmed deaths attributable to COVID-19. Through January 6, 2022, the seven-day average rates in the State of Michigan were 1,608.6 daily cases per million people and 7.9 daily deaths per million people. As of January 13, 2022, the weekly average positivity rate was 33.1%, and the current number of COVID-19 cases detected per day in Michigan was above 13,000. As of January 18, 2022, there were 4,530 Michiganders hospitalized with COVID-19. As of January 15, 2022, 64.4% of Michigan residents had received at least one dose of a COVID-19 vaccine.

The Omicron variant of COVID-19 (“Omicron”), 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 where physical distancing cannot be consistently maintained, such as nursing homes. While COVID-19 can cause deaths in persons of any age, deaths remain most prevalent among persons of advanced age. COVID-19 vaccine booster doses significantly reduce the risk of hospitalization and death, and so are especially important among nursing home residents. Many nursing homes have acted swiftly to ensure that their residents have the opportunity to receive booster doses; 74% of eligible Michigan nursing home residents having received a booster as of the week ending January 14, 2022. Some residents, however, have not yet had the opportunity to receive a COVID-19 booster dose.

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.

1. Definitions.

- (a) “Nursing home” has the meaning provided by MCL 333.20109(1).
- (b) “Up to date” means a person has received all recommended doses of a COVID-19 vaccine, including any COVID-19 booster dose(s) when eligible, as determined by the Centers for Disease Control and Prevention.

2. Requirement to offer vaccination on site.

- (a) As soon as possible, and no later than February 19, 2022, each nursing home in this state must offer and provide on-site administration of COVID-19 vaccines to residents who are not up to date as of January 20, 2022.
- (b) Beginning February 20, 2022, nursing homes must continue to offer and provide on-site administration of COVID-19 vaccines to residents as follows:
 - (1) Within 30 days of a newly admitted resident’s transfer into the nursing home, if eligible to receive a recommended dose of a COVID-19 vaccine; and
 - (2) Within 30 days of a resident becoming eligible to receive a recommended dose of a COVID-19 vaccine.

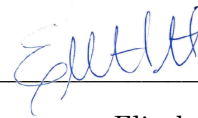
- (c) For residents who are unable to make their own medical decisions, nursing homes are required to contact the person(s) legally authorized to make medical decisions on behalf of the resident and make them aware of the on-site availability of COVID-19 vaccines.
- (d) Nursing homes must document residents' consent or refusal of the offer of a COVID-19 vaccine. Nursing homes must also document the consent, assent, or refusal of persons under subsection (c).
- (e) Nursing homes are encouraged to provide educational materials to residents regarding the benefits of COVID-19 vaccines. Materials can be located on [MDHHS's Long-Term Care COVID-19 Plan](#) webpage.

3. Implementation.

- (a) Nothing in this order modifies, limits, or abridges 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) Law enforcement officers, as defined in MCL 28.602(f), are deemed to be "department representatives" for purposes of enforcing this order and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Consistent with MCL 333.2261, each 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. Nursing homes that fail to comply with this order may be subject to other penalties and remedies under applicable law.
- (e) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (f) Nothing in this order requires a nursing home resident to receive a COVID-19 vaccine.
- (g) Nursing homes that are unable to comply with this order due to lack of resources are strongly encouraged to contact MDHHS immediately at MDHHS-COVID-LongTermCare@michigan.gov.

This order takes effect on January 21, 2022, at 12:01 AM. This order remains in effect until rescinded. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date: January 20, 2022



Elizabeth Hertel, Director

Michigan Department of Health and Human Services