



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ROBERT GORDON  
DIRECTOR

## MEMORANDUM

**DATE:** September 22, 2020

**TO:** Local Health Departments  
Health Care Providers  
Michigan Employers  
Michigan Colleges and Universities  
Other Interested Parties

**FROM:** Joneigh S. Khaldun, MD, MPH, FACEP  
Chief Medical Executive and Chief Deputy for Health  
Michigan Department of Health and Human Services (MDHHS)

**SUBJECT:** Disclosure of Protected Health Information for Disease Prevention and Control under Federal and State Law

### **Michigan's System of Public Health and Disease Investigations and Surveillance: COVID-19 Update**

This memo reiterates the legal authorities of MDHHS and local health departments (LHDs) regarding disease investigation and surveillance, authorized activities under federal and state law, and reporting requirements.

Particularly in the case of COVID-19 surveillance, it is **critical** that health care providers, employers, schools, and other institutions provide COVID-19 data to Michigan's public health institutions consistent with the federal and state laws outlined below. The rapid, accurate, and legal sharing of public health information with MDHHS and LHDs is vital to successfully break the chain of COVID-19 transmission in Michigan.

#### **Public Health Authorities in Michigan**

- MDHHS and LHDs are the public health authorities responsible for overseeing and safeguarding Michigan's public health.<sup>1</sup>
- MDHHS and LHDs "may inspect, investigate, or authorize an inspection or investigation to be made of, any matter, thing, premise, place, person, record, vehicle, incident, or event" in carrying out their duties.<sup>2</sup>
- MDHHS and LHD investigators who present their identification **MUST** be promptly provided with medical, epidemiologic, or other information relevant to a public health investigation.<sup>3</sup> This

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<sup>1</sup> MCL 333.2221; 333.2433; *see generally* 333.1101 et seq.

<sup>2</sup> MCL 333.2241; MCL 333.2446.

<sup>3</sup> R. 325.174(2)-(3).

includes, but is not limited to, information about persons who may be a health threat to others, who may have been exposed to a disease, or whose information is needed for an investigation.<sup>4</sup>

- MDHHS and LHDs are empowered to take “human, animal, environmental, or other types of specimens or cause such specimens to be obtained by appropriate means, including venipuncture, in the course of an investigation of a reported disease, infection, or condition.”<sup>5</sup>

### **HIPAA and Public Health**

- HIPAA’s Privacy Rule restricts the “use” and “disclosure” of certain “protected health information” held by “covered entities” (e.g. hospitals, doctor’s offices, pharmacies, clinical laboratories, and business associates of these entities).<sup>6</sup>
- HIPAA authorizes covered entities to disclose protected health information to public health authorities (e.g. MDHHS, LHDs) for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.<sup>7</sup>
- HIPAA authorizes covered entities to use or disclose protected health information as required by law.<sup>8</sup> Because Michigan law mandates compliance with MDHHS and LHD investigative activities, covered entities **MUST COMPLY** with these requests.
- Disclosure made to public health authorities for the public health purposes described above **do not require authorization or an opportunity to object** by the individual to whom the records relate.<sup>9</sup>

### **FERPA and Public Health**

- FERPA permits sharing of identifiable student records where doing so is necessary to protect the health or safety of students or other persons in an emergency.<sup>10</sup>
- The U.S. Department of Education specifically stated that “student education records, such as health records . . . [may] be disclosed, without consent, to public health departments if the educational agency or institution believes that the virus that causes COVID-19 poses a serious risk to the health or safety of an individual student in attendance at the educational agency or institution.”<sup>11</sup>

### **Reporting Requirements**

- Physicians and laboratories **MUST** report certain “reportable diseases” to local health departments within 24 (or in some cases, 72) hours of diagnosis or discovery.<sup>12</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> R. 325.174(4)

<sup>6</sup> See generally 45 C.F.R. Part 160 and Part 164.

<sup>7</sup> 45 CFR § 164.512(b)(1)(i).

<sup>8</sup> 45 C.F.R. § 164.512(a)

<sup>9</sup> 45 CFR § 164.512.

<sup>10</sup> 20 USC § 1232g(b)(1)(I).

<sup>11</sup> U.S. Dept. of Ed, March 2020 STUDENT PRIVACY POLICY OFFICE FERPA & Coronavirus Disease 2019 (COVID-19)

Frequently Asked Questions (FAQs),

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf)

<sup>12</sup> See generally R. 325.173.

- Novel coronaviruses, including COVID-19, **MUST** be reported to the local health department or the Michigan Disease Surveillance System (MDSS) **within 24 hours**.
- The current list of reportable diseases can be found at [www.michigan.gov/brickbook](http://www.michigan.gov/brickbook).
- Communicable disease information and resources can be found [www.michigan.gov/cdinfo](http://www.michigan.gov/cdinfo).
- Physicians and other health professionals may report any disease, infection, condition to that threatens the public health.<sup>13</sup>
- Identifiable medical and epidemiological information reported to MDHHS as part of a disease investigation is confidential, and is not open to public inspection unless:
  - The individual to whom the information relates consents to its release, OR
  - The director of MDHHS or an LHD determines that public inspection is necessary to protect the public health.<sup>14</sup>
- Under Executive Order 2020-161, all businesses that require employees to leave their home or residence for work **MUST**, when an employee is identified with a confirmed case of COVID-19, **IMMEDIATELY** notify the local health department, AND, within 24 hours, notify any co-workers, contractors, or suppliers who may have come into contact with the person with a confirmed case of COVID-19.<sup>15</sup>

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For the latest information on Michigan's response to COVID-19, please visit [www.michigan.gov/coronavirus](http://www.michigan.gov/coronavirus). You may also email our Community Health Emergency Coordination Center at: [checcdeptcoor@michigan.gov](mailto:checcdeptcoor@michigan.gov).

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<sup>13</sup> R. 325.173(4), (8).

<sup>14</sup> R. 325.181(2).

<sup>15</sup> Executive Order 2020-175, September 3, 2020, [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-538728--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-538728--,00.html).