

DEPARTMENT OF HEALTH AND HUMAN SERVICES

EMERGENCY RULE AMENDING R 325.9031

ADDING COVID-19 TO DEFINITION SECTION OF “INFECTIOUS AGENTS”

EMERGENCY RULES

Filed with the Secretary of State on May 18, 2020

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

By authority conferred on the Department of Health and Human Services by sections 2221, 2226, 2233, 2253, and 2262 of the public health code, 1978 PA 368, MCL 333.2221, 333.2226, 333.2233, 333.2253, and 333.2262, Executive Reorganization Order No. 2015-1, MCL 400.227, and section 48 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.248.

FINDING OF EMERGENCY

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. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services (MDHHS) identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Whitmer issued Executive Order No. 2020-4 declaring a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, MCL 30.401 to 30.421, and the Emergency Powers of the Governor Act, 1945 PA 302, MCL 10.31 to 10.33. Further, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, the Governor issued Executive Order 2020-33 on April 1, 2020. This order expanded Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

As of April 26, 2020, at least 37,778 Michiganders have been confirmed to have COVID-19; many thousands more are likely infected but have not been tested; and 3,315 people have died. Hospitals in the regions with the largest number of cases report that their beds are full or nearly full and convention centers and dormitories are being converted into provisional medical care facilities to cope with the overflow.

MCL 333.2843 requires that certain physicians complete medical certifications for deceased persons. When a physician has actual knowledge of the presence of an “infectious agent” in the deceased person, MCL 333.2843b requires that the physician provide that information to funeral directors so that appropriate infection control precautions can be taken. MCL 333.2843b(4) authorizes MDHHS to create rules to define the term “infectious agent,” and R 325.9031 was promulgated for that purpose. The current rules do not list COVID-19 as an agent.

On April 14, 2020, the Journal of Forensic and Legal Medicine reported the world’s first suspected case of a forensic practitioner contracting COVID-19 from the body of a COVID-19 victim. The Centers for Disease Control and Prevention recommends that medical examiners, coroners, pathologists, and other workers involved in providing postmortem care, take precautions to prevent transmission of COVID-19 where persons may have died from that disease. Informing funeral directors of the presence of COVID-19 in a body under their care is thus essential to protecting funeral directors’ health and safety. Amending R 325.9031 to include COVID-19 in the definition of “infectious agent” will help to accomplish this goal.

Here, if the standard rulemaking process was followed, the amendment to the term “infectious agent” would not go into effect for many months. The resulting delay would increase the risk to funeral directors and other occupations involving postmortem activities, contribute to the spread of COVID-19, and exacerbate the current state of emergency. I therefore find that preservation of the public health, safety, and welfare requires promulgation of emergency rules under MCL 24.248 to add COVID-19 to the definition section of R 325.9031 as an “infectious agent” under the Director’s authority above.

Rule 1. Application of other rules.

These emergency rules, while in effect, supersede R 325.9031 of the Michigan Administrative Code.

Rule 2.

For purposes of section 2843b of the public health code, 1978 PA 368, MCL 333.2843b, “infectious agent” means any of the following diseases or organisms:

- (a) Acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.
- (b) Anthrax.
- (c) Brucellosis.
- (d) Cholera.
- (e) Creutzfeldt-Jakob disease.
- (f) Diphtheria.
- (g) [si=?]Campylobacter species[ri=?].
- (h) [si=?]Cryptosporidium species[ri=?].
- (i) [si=?]Entamoeba histolytica[ri=?](amebic dysentery).
- (j) [si=?]Giardia lamblia[ri=?].
- (k) [si=?]Salmonella species,[ri=?] including typhoid fever.

- (l) [si=?]Shigella species[ri=?].
- (m) [si=?]Yersinia enterocolitica[ri=?].
- (n) Hepatitis, viral, any type.
- (o) [si=?]Group A streptococcus[ri=?].
- (p) Plague.
- (q) Poliomyelitis, acute infectious.
- (r) Rat-bite fever, spirillum or [si=?]streptobacillary[ri=?].
- (s) Relapsing fever.
- (t) Rickettsial fevers, including Rocky Mountain spotted fever and typhus.
- (u) Syphilis, primary and secondary.
- (v) [si=?]Mycobacterium tuberculosis[ri=?].
- (w) Tularemia ([si=?]Pasteurella tularensis[ri=?]).
- (x) Viral hemorrhagic fevers, including Lassa fever, Ebola disease, and Marburg virus disease.
- (y) Meningococcus ([si=?]Neisseria meningitidis[ri=?]).
- (z) Leprosy (Hansen's disease; [si=?]Mycobacterium leprae[ri=?]).
- (aa) Leptospirosis.
- (bb) Trypanosomiasis, such as Chagas' disease and African sleeping sickness.
- (cc) Rabies.
- (dd) COVID-19.



Robert Gordon
Director

Date: May 1, 2020

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Health and Human Services that circumstances creating an emergency have occurred and that preservation of the public health, safety, and welfare requires promulgation of the above rules.

Honorable Gretchen Whitmer
Governor



Date: May 16, 2020 9:05 pm

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Health and Human Services, dated April 27, 2020, entitled "Emergency Rule Amending R 325.9031 Adding COVID-19 to Definition Section of 'Infectious Agents.'" I approve the rules as to form, classification, and arrangement.

Dated: April 27, 2020

LEGISLATIVE SERVICE BUREAU

By



Elizabeth R. Edberg,
Legal Counsel



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached **emergency administrative rules**, dated April 27, 2020, in which the Department of Health and Human Services proposes to promulgate emergency rules entitled “**Emergency Rule Amending R 325.9031 - Adding COVID-19 to Definition Section of ‘Infectious Agents’**”.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: April 28, 2020

Michigan Office of Administrative Hearings and Rules

A handwritten signature in black ink that reads "Katie Wienczewski".

By: _____
Katie Wienczewski,
Attorney