Gatherings and Face Mask 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. There is currently no approved vaccine for this disease. 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 that 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."); see also *id.* (McCormack, C.J., dissenting, 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 instituting mitigating measures like face masks to prevent ill or infected persons from infecting others.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of October 27, 2020, Michigan has seen 161,907 confirmed cases and 7,211 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove those numbers down dramatically, greatly reducing the loss of life. Although fewer than 200 new cases per day were reported in mid-June, cases have increased since that time, with over 3,000 cases per day being reported on some recent days.

The State of Michigan presently has 172 cases per million people and positivity of tests has increased from about 2% to 5.5%. Both indicators have been increasing for over four weeks. Three of five regions are now at the highest risk level, risk level E (Grand Rapids, Kalamazoo, and Upper Peninsula). Rising cases creates significant pressures on our emergency and hospital system. Complaints of coronavirus like illness (CLI) in the emergency department increased for the sixth week in a row for the state and there are now four regions where greater than 1% of all persons at the emergency department present with CLI (Grand Rapids, Kalamazoo, Traverse City, and Upper Peninsula). Hospitalizations for COVID-19 have doubled over the last three weeks. There are more than 5% COVID hospitalizations in all regions except Traverse City. The state death rate has increased for five consecutive weeks to 2.1 deaths per million people. More than 20 weekly deaths are seen in four regions (Detroit, Grand Rapids, Kalamazoo, and Upper Peninsula). Due to delays between exposure, onset of symptoms, and hospitalization, the sharp rise in new infections heralds challenging weeks to come, with growing strain on our healthcare infrastructure.

To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools as we head into the influenza season, we must not permit the spread of COVID-19 to further increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. As such, it is necessary to issue orders under the Public Health Code addressing these topics.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, 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 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 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. “Child care organizations” means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101 of the Michigan Administrative Code).
    b. “Face mask” means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual’s mouth and nose.
    c. “Food service establishment” means that term as defined in section 1107(t) of th Food Law, 2000 PA 92, as amended, MCL 289.1107(t).
    d. “Employee” means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes

independent contractors.

e. "Gathering" means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
f. "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
g. "Sports Organizer" means an institution, association, or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport.
h. "Recreational sports and exercise facilities" means a location in which individuals participate in individual or group physical activity, including, gymnasiums, fitness centers, recreation centers, exercise studios, bowling centers, roller rinks, ice rinks, and trampoline parks.
i. "Symptoms of COVID-19" means 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(h) of PA 238 of 2020, this definition represents the latest medical guidance, and serves as the controlling definition.

2. **General capacity limitations at gatherings.**
   a. Indoor gatherings are permitted only as follows:
      1. 10 or fewer persons are gathered at a residence;
      2. 50 or fewer persons are gathered in a non-residential venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet in each occupied room;
      3. 500 or fewer persons are gathered in a non-residential venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue; and
      4. At non-residential gatherings, all persons wear a face mask;
   b. Outdoor gatherings are permitted only as follows:
      1. 100 or fewer persons are gathered at a residence;
      2. At non-residential venues:
         A. 1,000 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 30 persons per 1,000 square feet, including within any distinct area within the event space;
         B. 1,000 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 30% of seating capacity of the venue; and
         C. All persons wear a face mask.
   c. The limitations to the size of gatherings in sections 2(a) and 2(b) do not apply to:
      1. Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, factory floor, food service establishment, shopping mall, public pool, or workplace.
      2. Voting or election-related activities at polling places;
      3. Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
      4. Organized sports gatherings held in accordance with section 5 of this order;

5. Students in a classroom setting;
6. Children in a daycare setting; or
7. Persons traveling on a school bus or other public transit.

d. As a condition of hosting a gathering, organizers and venues hosting gatherings described in sections 2(a) and 2(b) must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain six feet of distance from one another to the extent possible. For all non-residential gatherings, if attendees are seated at tables, no more than six persons may share a table and tables must be spaced a minimum of 6 feet apart.

3. **Gathering restrictions for particular types of facilities.** In addition to the gathering limitations set forth in section 2, and as a condition of permitting gatherings within the facilities described in this section, the following capacity limitations apply:
   a. A gathering at a retail store, library, or museum must not exceed 50% of total occupancy limits established by the State Fire Marshal or a local fire marshal.
   b. A gathering at recreational sports and exercise facilities:
      1. Must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal, and;
      2. Must have at least six feet of distance between each workout station.
   c. Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, personal care services, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain six feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
   d. A gathering at an outdoor pool must not exceed 50% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
   e. A gathering at an indoor pool must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
   f. A gathering at non-tribal casinos must not exceed 15% of total occupancy limits established by the State Fire Marshal or a local fire marshal.
4. **Food service establishment gathering restrictions.**
   a. In addition to the gathering limits set forth in section 2, gatherings in food service establishments are prohibited as follows:
      1. In indoor common areas in which people can congregate, dance, or otherwise mingle;
      2. If there is less than six feet of distance between each party;
      3. If the number of persons at a table exceeds 6;
      4. If the number of patrons in the restaurant exceeds 50% of normal seating capacity;
      5. Anywhere alcoholic beverages are sold for consumption onsite, unless parties are seated and separated from one another by at least six feet, and do not intermingle; and
      6. If they involve any persons not seated at a table or at the bar top (customers must wait outside the food service establishment if table or bar top seating is unavailable).

b. In the event that an employee of a food service establishment is confirmed positive for COVID-19 or shows symptoms of COVID-19 while at work, a gathering at that food service establishment is prohibited until the food service establishment has been deep cleaned consistent with Food and Drug Administration and CDC guidance.

5. **Organized sports gathering restrictions.** Gatherings for the purpose of organized sports are prohibited unless the gathering meets all the following conditions:
   a. Athletes wear a face mask (except when swimming), or consistently maintain six feet of physical distance (except for occasional and fleeting moments) when training for, practicing for, or competing in an organized sport. Any sport in which the participants are not able to consistently maintain six feet of distance, (including, for example, football, soccer, basketball, or volleyball) must wear a face mask. Athletes may also fulfill the face mask requirement through compliance with the **MDHHS guidance on Additional Measures for Safer Athletic Practice and Play**.
   b. Sports organizers ensure that athletes comply with this section for each organized sporting event; and
   c. Sports organizers and venues ensure either that the live audience for organized sport competitions is limited to the guests of the athletes (requiring face masks as specified in this order), with each athlete designating up to two guests, or that the event complies with gathering requirements in section 2 of this order.
6. **Face mask requirement at gatherings.**
   a. Except as permitted in section 7, all persons participating in non-residential gatherings are required to wear a face mask. Persons participating in residential gatherings are strongly encouraged to wear a face mask.
   b. Public transit systems, including buses and cars for hire, must require use of face masks, and must enforce physical distancing among all patrons to the extent feasible.
   c. Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.
   d. A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 7 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
   e. A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:
      1. All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;

2. All children 4 years and older when in indoor hallways and common areas;
3. All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

7. **Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in this order does not apply to individuals who:
   a. Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 6(e);
   b. Cannot medically tolerate a face mask;
   c. Are eating or drinking while seated at a food service establishment;
   d. Are exercising outdoors and able to consistently maintain six feet of distance from others;
   e. Are swimming;
   f. Are receiving a service for which removal of the face mask is necessary;
   g. Are asked to temporarily remove a face mask for identification purposes;
   h. Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
   i. Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
   j. Are at a polling place for purposes of voting in an election;
   k. Are engaging in a religious service; or
   l. Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker.
8. **Contact tracing requirements for particular gatherings.**
   a. Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
      1. All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
      2. Recreational sports and exercise facilities, and entertainment facilities (except for outdoor, non-ticketed events), including arenas, cinemas, concert halls, performance venues, sporting venues, stadiums and theaters, as well as places of public amusement, such as amusement parks, arcades, and bingo halls;
   b. All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact traci
   c. All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who purchase food for consumption on the premises, and the date and time of entry.

d. Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.

9. **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 the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, 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. Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.
   e. 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.
   f. The October 9, 2020 order entitled Gathering Prohibition and Mask Order is rescinded. Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
   g. 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 also punishable by a civil fine of up to $1,000 for each violation or day that a violation continues.
   h. 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, except for section 8(c), which takes effect on November 2, 2020. 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: October 29, 2020

Robert Gordon, Director

Michigan Department of Health and Human Services

Gatherings and Facemask Order (PDF)

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Rescission of Emergency Orders

FAQs for the June 1, 2021 Gatherings and Face Mask Order

June 1, 2021 Gatherings and Face Mask Order

May 21, 2021 - Requirements for Residential Care Facilities - Rescission of March 17, 2021

FAQs for the May 15, 2021 Gatherings and Face Mask Order

May 15, 2021 Gatherings and Face Mask Order

FAQs for the May 6, 2021 Gatherings and Face Mask Order

Testing in Skilled Nursing Facilities, Homes for the Aged, and Adult Foster Care Facilities Rescission of October 28, 2020 Order

May 6, 2021 Gatherings and Face Mask Order

FAQs for the April 19, 2021 Gatherings and Face Mask Order

April 19, 2021 - Gatherings and Face Mask Order

March 19 - Gatherings and Face Mask Order

March 31 - Gatherings and Face Mask Order Amendment

FAQs for the March 19, 2021 Gatherings and Face Mask Order

March 17 - Requirements for Residential Care Facilities Rescission of March 2, 2021 Order

FAQs for the March 5, 2021 Gatherings and Face Mask Order

March 5, 2021 Gatherings and Face Mask Order

March 2, 2021 Requirements for Residential Care Facilities Rescission of December 8, 2020 Order

Mandatory Testing for Prison Staff

Gatherings and Face Mask Order

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