Gatherings and Face Mask Order

Emergency Order under MCL 333.2253 – 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 those 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."); *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 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 November 13, 2020, Michigan had seen 244,741 confirmed cases and 7,929 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 daily case

numbers dramatically down to less than 200 confirmed cases in mid-June, greatly reducing the loss of life. Since October, Michigan has seen an exponential growth in cases. Daily new cases are now over 6,000 which is three times higher than what was seen in the spring.

The State of Michigan presently has a seven-day average of 512 cases per million people, which is five times higher than the case rate on October 1. Test positivity has increased from 3.2% in early October to 12% on November 13. And while testing has increased 78% since October 1, test positivity has increased 225% during that same time frame, indicating COVID-19 spread is happening much more quickly than tests being administered. All regions in Michigan are now at the highest risk level, with seven-day averages in excess of 150 cases per million residents. Rising cases creates significant pressure on our emergency and hospital systems. Complaints of coronavirus-like illness in emergency departments increased for the ninth week in a row for the state. Hospitalizations for COVID-19 have doubled in less than two weeks, and there are now over 4.5 times the hospitalizations recorded on October 1. An average of 363 daily hospital admissions were seen in Michigan in the last week, and with individuals under 60 years old accounting for nearly half of all new hospital admissions. With over 3,000 Michiganders hospitalized for COVID-19, 15% of all available inpatient beds are now occupied by patients who have COVID-19, the highest number since mid-April. The state death rate is 5 deaths per million people and continues to increase. The current death rate is four times higher than it was in early October. There are more than 300 weekly deaths in Michigan and nearly every region has more than 20 weekly deaths. Due to delays between exposure, onset of symptoms, and hospitalization, the sharp rise in new infections suggests that the state is entering the most challenging phase of the pandemic thus far.

To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools during the influenza season, we must reduce the spread of COVID-19. This necessitates use of more forceful mitigation techniques 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, 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. "Child-care organization" 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(1)(q) 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 the 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. "Household" means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
g. "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
h. "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.
i. "Exercise facility" means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
j. "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(h) of 2020 PA 238, this definition represents the latest medical guidance, and serves as the controlling definition.

2. **General capacity limitations at gatherings.**
   a. Indoor gatherings:
      1. Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
      2. Are prohibited at non-residential venues.
   b. Outdoor gatherings are permitted only as follows:
      1. At residential venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
      2. At non-residential venues:
         A. 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including w… any distinct area within the event space;
         B. 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.

c. The limitations to 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, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
    2. Gatherings between an employee and a customer for the purpose of receiving services;
    3. Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
    4. Voting or official election-related activities;
    5. Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
    6. Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
    7. Children in a child-care organization or camp setting;
    8. Persons traveling on a school bus or other public transit;
    9. Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
    10. Gatherings of up to 25 persons for the purpose of a funeral;
    11. Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order.

d. As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

3. **Gathering restrictions for particular types of facilities.**

a. Gatherings, are prohibited in the following settings:
    1. Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; stadiums; and theaters;
    2. Recreational facilities and places of public amusement, including: amusement parks; arcades; bingo halls; bowling alleys; casinos; night clubs; skating rinks; strip clubs; water parks; and trampoline parks;

b. Gatherings are permitted at food service establishments under the following conditions:
    1. Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
    2. Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart.

c. Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.

4. **Gathering restrictions for facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:

    a. A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure.
        1. Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
    b. At exercise facilities:
        1. Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
        2. There must be at least 12 feet of distance between each occupied workout station;
        3. Gatherings for group fitness activities or classes are prohibited.
    c. Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 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 indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
    e. In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.

5. **Schools, colleges, and universities.**
    a. Gatherings at public, nonpublic, and boarding schools for the purpose of conducting in-person instruction, sports, and extracurricular activities serving pupils in grades 9 through 12 are prohibited, except for in-person instruction of pupils who are English Language Learners or participants in special education services;
    b. Gatherings at public, nonpublic, and boarding schools for the purpose of conducting in-person instruction of pupils in prekindergarten through grade 8 are permitted, subject to local health department and school district decisions on remote learning. Gatherings for the purpose of sports and extracurricular activity are prohibited;
    c. Gatherings at public, nonpublic, and boarding schools are permitted for the purpose of providing services to students in need, including food distribution, access to internet connectivity, physical and mental health care services, and child care;

d. Gatherings at colleges and universities are prohibited for the purpose of holding in-person classes, extracurricular events, or other events are prohibited, except as permitted in sections 2 and 6 of this order.

6. **Organized sports gathering restrictions.**
   a. Gatherings for the purpose of organized sports are prohibited unless all participants, teams, and venues comply with the enhanced testing regimen specified in the Additional Mitigation Measures for Safer Athletic Practice and Play without the use of Face Coverings section of **MDHHS guidance on Additional Measures for Safer Athletic Practice and Play**. Sports organizers complying with this section may host gatherings for the purpose of practice and competition notwithstanding the gathering prohibitions in sections 2 and 5(c).
   b. Sports organizers may not permit gatherings of spectators.
7. **Face mask requirement at gatherings.**
   a. All persons participating in gatherings are required to wear a face mask.
   b. As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use 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 8 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 indoor common areas;
      3. All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.
8. **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 gatherings as required by 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 7(e));
b. Cannot medically tolerate a face mask;
c. Are eating or drinking while seated at a food service establishment or at a private residence;
d. Are exercising outdoors and able to consistently maintain 6 feet of distance from others;
e. Are swimming;
f. Are receiving a medical 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 6 feet away from the speaker.

9. **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. Exercise facilities.
   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 tracing.
   c. 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.
   d. Data collected under this section:
      1. Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
      2. Must be protected as confidential information to the fullest extent of the law;
      3. Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
      4. Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement,

they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.

10. **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. Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
    g. Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.
    h. 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.
    i. 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.
    j. It is not a violation of this order for a person to enter a facility otherwise closed for gatherings if they are entering solely for the purpose of using restroom facilities.

This order takes effect on November 18, 2020 at 12:01 AM, at which time the October 29, 2020, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through December 8, 2020 at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to **COVID19@michigan.gov**.

Date: November 15, 2020

Robert Gordon, Director

Michigan Department of Health and Human Services

Gatherings and Face Mask Order (PDF)

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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 31 - Gatherings and Face Mask Order Amendment

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

March 19 - 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

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