STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

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LT. GOVERNOR

SECRETARY OF SENATE
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EXECUTIVE ORDER

No. 2020-50

Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic

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 Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared 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, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

The COVID-19 pandemic poses a particularly dire threat to the health and safety of both residents and employees of long-term care facilities. To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial to limit in-person contact as much as possible and, for those in-person services and interactions that must occur, to engage in social distancing and other mitigation practices. For the residents of long-term care facilities to receive the care they need, however, the residents and staff of the facilities must share close quarters and interact in person regularly, and limitations on access to personal protective equipment only make it more difficult for these in-person interactions to be carried out safely. Due to the nature of the care provided in long-term care facilities and the vulnerable status of their residents, the risk of harm posed by a single positive case of COVID-19 to the entire facility—residents and staff—is inordinately high. As a result, it is reasonable and necessary to afford limited and temporary relief from certain rules and procedures so as to provide enhanced protections for residents and employees of long-term care facilities during this unprecedented crisis.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

I. Protections for residents of long-term care facilities

1. Notwithstanding any statute, rule, regulation, or policy to the contrary, a long-term care facility must not effectuate an eviction or involuntary discharge against a resident for nonpayment, nor deny a resident access to the facility, except as otherwise provided in this order.

2. A long-term care facility must not prohibit admission or readmission of a resident based on COVID-19 testing requirements or results in a manner that is inconsistent with relevant guidance issued by the Department of Health and Human Services ("DHHS").

3. The following apply to a resident that obtained housing outside of a long-term care facility, including but not limited to living with a family member, during the declared states of emergency and disaster:

   (a) The resident does not forfeit any right to return that would have been provided to the resident under state or federal law had they been hospitalized or placed on therapeutic leave.

   (b) The long-term care facility of origin must accept the return of the resident, provided it can meet the medical needs of the resident and there are no statutory grounds to refuse the return, as soon as capacity allows.

   (c) Prior to accepting the return of such a resident, the long-term care facility must undertake screening precautions that are consistent with relevant DHHS guidance when receiving the returning resident.

4. Nothing in this order abrogates the obligation to pay or right to receive payment due under an admission contract between a resident and a long-term care facility.

5. All long-term care facilities must use best efforts to facilitate the use of telemedicine in the care provided to their residents, including, but not limited to, for regular doctors' visits, telepsychology, counseling, social work and other behavioral health visits, and physical and occupational therapy.

II. Protections for employees and residents of long-term care facilities

1. It is the public policy of this state that employees of long-term care facilities or regional hubs who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should remain in their homes or places of residence, as provided in section 2 of Executive Order 2020-36 or any order that may follow from it, and that their employers shall not discharge, discipline, or otherwise retaliate against them for doing so, as provided in section 1 of Executive Order 2020-36 or any order that may follow from it.

2. Long-term care facilities must:

   (a) Cancel all communal dining and all internal and external group activities throughout the duration of the declared states of emergency and disaster;

   (b) Take all necessary precautions to ensure the adequate disinfecting and cleaning of facilities, in accordance with relevant guidance from the Centers for Disease Control and Prevention ("CDC");

   (c) Use best efforts to provide appropriate personal protective equipment ("appropriate PPE") and hand sanitizer to all employees that interact with residents;

   (d) As soon as reasonably possible, but no later than 12 hours after identification, inform employees of the presence of a COVID-19-affected resident;

   (e) Notify employees of any changes in CDC recommendations related to COVID-19;

   (f) Keep accurate and current data regarding the quantity of each type of appropriate PPE available onsite, and report such data to EMResource upon DHHS's request or in a manner consistent with DHHS guidance; and

   (g) Report to DHHS all presumed positive COVID-19 cases in the facility together with any additional data required under DHHS guidance.

III. Procedures related to transfers and discharges of COVID-19-affected residents

1. A long-term care facility must report the presence of a COVID-19-affected resident to their local health department within 24 hours of identification.

2. A long-term care facility must transfer a COVID-19-affected resident who is medically unstable to a hospital for evaluation.

3. A nursing home with a census below 80% must create a unit dedicated to the care of COVID-19-affected residents ("dedicated unit") and must provide appropriate PPE, as available, to direct-care employees who staff the dedicated unit. A nursing home provider that operates multiple facilities may create a dedicated unit by dedicating a facility for such a purpose.

4. A long-term care facility must adhere to the following protocol with respect to a COVID-19-affected resident who is medically stable:

   (a) If the long-term care facility has a dedicated unit and provides appropriate PPE to the direct-care employees who staff the dedicated unit, the facility must transfer the COVID-19-affected resident to its dedicated unit.

   (b) If the long-term care facility does not have a dedicated unit or does not provide appropriate PPE to the direct-care employees who staff the dedicated unit, it must transfer the COVID-19-affected resident to a regional hub, if one is available to accept the resident. If no regional hub is available to accept the transfer of the COVID-19-affected resident, the long-term care facility must attempt to send the resident to a hospital within the state that has available bed capacity. If no hospital will admit the COVID-19-affected resident, the long-term care facility must transfer the resident to an alternate care facility.

5. Once a long-term care facility resident who has been hospitalized due to onset of one or more of the principal symptoms of COVID-19 becomes medically stable and eligible for discharge in the judgment of the resident's medical providers, a hospital must discharge the resident in accordance with the following protocol:

   (a) If the long-term care facility where the resident resided prior to the onset of one or more of the principal symptoms of COVID-19 ("facility of residence") has a dedicated unit and provides appropriate PPE to the direct-care employees who staff the dedicated unit, the hospital must discharge the resident to their facility of residence for placement in the dedicated unit, provided there is available bed capacity.

   (b) If a discharge in accordance with section 5(a) of this part is not available, the hospital must discharge the resident to a regional hub, provided there is available bed capacity.

   (c) If a discharge in accordance with section 5(a) or 5(b) of this part is not available, the hospital must transfer the resident to any alternate care facility with available bed capacity in accordance with the following protocol:

      (1) Any alternate care facility within the state that has available bed capacity to receive the resident must accept a transfer authorized by this order.

(2) An alternate care facility must discharge a long-term care facility resident to the facility of residence as soon as capacity allows. If the facility of residence lacks available capacity, the alternate care facility must transfer the resident to a regional hub. If a regional hub receives a resident under this part, it must transfer the resident to the facility of residence as soon as capacity allows.

6. For any transfer or discharge of a resident, the transferring or discharging entity must ensure that the resident's advance directive accompanies the resident and must disclose the existence of any advance directive to medical control at the time medical control assistance is requested.

7. Any long-term care facility that has a dedicated unit and provides appropriate PPE to the direct-care employees who staff the dedicated unit must admit anyone that it would normally admit as a resident, regardless of whether the individual has recently been discharged from a hospital treating COVID-19 patients.

8. A long-term care facility that transfers or discharges a resident in accordance with this order must notify the resident and the resident's representative of the transfer or discharge as soon as practicable.

9. A transfer or discharge of a long-term care facility resident that is made in accordance with this order constitutes a transfer or discharge mandated by the physical safety of other facility residents and employees as documented in the clinical record, for purposes of section 21773(2)(b) of the Public Health Code, 1978 PA 368, as amended, MCL 333.21773(2)(b), and constitutes a transfer or discharge that is necessary to prevent the health and safety of individuals in the facility from being endangered, for purposes of 42 CFR 483.15(c)(1)(i)(C)-(D) and (c)(4)(ii)(A)-(B).

10. To the extent necessary to effectuate this terms of this order, strict compliance with any statute, rule, regulation, or policy pertaining to bed hold requirements or procedures, or to pre-transfer or pre-discharge requirements or procedures, is temporarily suspended. This includes, but is not limited to, strict compliance with the requirements and procedures under sections 20201(3)(e), 21776, 21777(1), and 21777(2) of the Public Health Code, MCL 333.20201(3)(e), MCL 333.21773(2), MCL 333.21776, MCL 333.21777(1), and MCL 333.21777(2), as well as Rules 325.1922(13)-(16), 400.1407(12), 400.2403(9), and 400.15302 of the Michigan Administrative Code.

IV. Definitions and general provisions

1. For purposes of this order:

   (a) "Adult foster care facility" has the same meaning as provided by section 3(4) of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.703(4).

(b) "Alternate care facility" means any facility activated by the state to provide relief for hospitals that surge past their capacity, including but not limited to the TCF Regional Care Center.

(c) "Appropriate PPE" means the PPE that DHHS recommends in relevant guidance.

(d) "COVID-19-affected resident" means a resident of a long-term care facility who is COVID-19 positive, who is a person under investigation, or who displays one or more of the principal symptoms of COVID-19.

(e) "Home for the aged" has the same meaning as provided by section 20106(3) of the Public Health Code, MCL 333.20106(3).

(f) "Long-term care facility" means a nursing home, home for the aged, adult foster care facility, or assisted living facility.

(g) "Medically unstable" means a change in mental status or a significant change or abnormality in blood pressure, heart rate, oxygenation status, or laboratory results that warrants emergent medical evaluation.

(h) "Nursing home" has the same meaning as provided by section 20109(1) of the Public Health Code, MCL 333.20109(1).

(i) "Person under investigation" means a person who is currently under investigation for having the virus that causes COVID-19.

(j) "Principal symptoms of COVID-19" are fever, atypical cough, or atypical shortness of breath.

(k) "Regional hub" means a nursing home that is designated by DHHS as a dedicated facility to temporarily and exclusively provide care to COVID-affected residents.

2. DHHS may issue orders and directives, and take any other actions pursuant to law, to implement this executive order.

3. This order is effective immediately and continues through May 13, 2020.

4. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 15, 2020

Time: 3:36 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE