STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING
ROBERT GORDON
DIRECTOR

Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order

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. 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. Throughout the pandemic, Michigan has used a range of public health tools and guidance to contain the spread of COVID-19 and protect the public health, including via the Governor's authority under the Emergency Management Act and the Emergency Powers of Governor Act. On Friday, October 2, 2020, the Michigan Supreme Court concluded that the Governor was not authorized by law to issue executive orders addressing COVID-19 after April 30, 2020, invalidating the executive orders on that topic.

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 100 new cases per day were reported in mid-June, cases have increased since that time, and recently nearly 1,000 new cases have been reported per day. To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and keep schools open as we head into the influenza season, we must not permit the spread of COVID-19 to increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. In the absence of the Governor's emergency orders, it is necessary to issue orders under the Public Health Code addressing these topics.

Michigan law imposes on 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. In recognition of the severe, widespread harm caused by epidemics, MDHHS has special powers, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253 ("If 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* (opinion of Viviano, J., concurring, at 20) ("the 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 McCormack, C.J., dissenting, at 12.

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 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. **Attendance limitations at gatherings.**

(a) "Gathering" means any occurrence where persons from multiple households are present in a shared space in a group of two or more.

(b) The restrictions imposed by this section do not apply to the incidental gathering of persons in a shared space, including an airport, bus station, factory floor, restaurant, shopping mall, public pool, or workplace.

(c) Gatherings are permitted only as follows:

(1) Indoor gatherings of up to 10 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);

(2) Indoor gatherings of up to 10 persons occurring at a non-residential venue are permitted provided each person at the gathering wears a face covering;

(3) Indoor gatherings of more than 10 and up to 500 people occurring at a non-residential venue are permitted only to the extent that the organizers and venue:

(A) In venues with fixed seating, limit attendance to 20% of seating capacity of the venue, provided however that gatherings at up to 25% of seating capacity are permitted in Region 6, as that region was defined in Executive Order 2020-176;

(B) In venues without fixed seating, limit attendance to 20 persons per 1,000 square feet in each occupied room, provided however that gatherings of up to 25 persons per 1,000 square feet in each occupied room are permitted in Region 6, as that region was defined in Executive Order 2020-176;

(C) Require that each person gathered wears a face covering.

(4) Outdoor gatherings of up to 100 persons occurring at a residence are permitted (face coverings are recommended for such gatherings);

(5) Outdoor gatherings of up to 100 persons occurring at a non-residential venue are permitted provided that each person at the gathering wears a face covering;

(6) Outdoor gatherings of more than 100 and up to 1,000 persons occurring at a non-residential venue with fixed seating are permitted only to the extent that the organizers and venue:

(A) In venues with fixed seating, limit attendance to 30% of seating capacity;

(B) In venues without fixed seating, limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space;

(C) Require that each person gathered wear a face covering.

(d) Gatherings are permitted for the following purposes notwithstanding the requirements of subsection (1)(c):

(1) Voting or election-related activities at polling places;

(2) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;

(3) Gatherings for the purpose of engaging in organized sports held in accordance with section 5 of this order.

(4) Students in a classroom setting or children in a daycare setting.

(e) Organizers and venues hosting gatherings permitted under subsection (c) of this section must ensure that persons not part of the same household maintain six feet of distance from one another, including by designing the gathering to encourage and maintain social distancing.

2. **Face covering requirement at gatherings.**

(a) Except for schools in Region 6, as that term was defined in Executive Order 2020-176, businesses, government offices, schools, and other operations must not allow indoor gatherings of any kind unless they require individuals to wear a face covering consistent with section 3 of this order. For schools in Region 6, the wearing of face coverings is recommended.

(b) A business, school, government office, or other operation may not assume that someone who enters the business without a face covering falls in one of the exceptions specified in section 3 of this order, including the exception for individuals who cannot medically tolerate a face covering. A business, school, government office, or other operation may, however, accept an individual's verbal representation that they are not wearing a face covering because they fall within a specified exception.

3. **Exceptions to face covering requirements.** Although a face covering is strongly encouraged even for individuals not required to wear one, the requirement to wear a face covering does not apply to individuals who:

(a) Are younger than five years old (and, per guidance from the Centers for Disease Control and Prevention ("CDC"), children under the age of two should not wear a mask);

(b) Cannot medically tolerate a face covering;

(c) Are eating or drinking while seated at a food service establishment;

(d) Are exercising outdoors and able to consistently maintain six feet of social distance;

(e) Are swimming;

(f) Are receiving a service for which temporary removal of the face covering is necessary;

(g) Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;

(h) Are communicating with someone who is deaf, deafblind, or hard of hearing and where the 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 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 officiating or engaging in a religious service;

(l) Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker;

4. **Food service establishments.** Food service establishments, as defined in section 1107(t) of the Michigan Food Law, 2000 PA 92, as amended, MCL 289.1107(t), must:

   (a) Close indoor common areas in which people can congregate, dance, or otherwise mingle.

   (b) Prohibit indoor gatherings anywhere alcoholic beverages are sold for consumption onsite, except for where parties are seated and separated from one another by at least six feet, and do not intermingle.

5. **Organized sports.** For purposes of this order, gatherings for the purpose of organized sports are permitted in accordance with this section. "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by an institution or by an association that sets and enforces rules to ensure the physical health and safety of all participants ("sports organizer" or "sports organizers"). Organizers and venues of organized sports must ensure that:

   (a) Athletes wear a face covering (except when swimming) or consistently maintain six feet of social distance (except for occasional and fleeting moments) when training for, practicing for, or competing in an organized sport. For example, an athlete participating in a football, soccer, or volleyball game would not be able to consistently maintain six feet of distance, and therefore would need to wear a face covering. Sports organizers shall ensure that athletes comply with this section for each organized sporting event. Notwithstanding section 3(b) of this order, athletes training for, practicing for, or competing in an organized sport wear a face covering.

   (b) Sports organizers should follow the guidance issued by this Department regarding whether and how a sport can be played safely.

   (c) For organized sports competitions, sports organizers must ensure either that the live audience is limited to the guests of the athletes, with each athlete designating up to two guests, or that the event complies with gathering requirements of section 1(c) in this order.

   (d) For indoor organized sports, sports organizers must ensure that no concessions are sold at the venue.

   (e) Notwithstanding any other provision of this order, professional sports leagues and teams, including professional athletes engaged in individual sports, may engage in professional sports operations, provided that:

      (1) The activities are conducted pursuant to a COVID-19 safety plan that is consistent with any guidance from the CDC and this Department; and

      (2) Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.

6. **Implementation.**

   (a) Nothing in this order should be taken to modify, limit, or abridge protections provided by state or federal law for a person with a disability.

   (b) Pursuant to 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 of 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 July 29, 2020 order regarding Executive Orders 2020-153, 2020-160, and 2020-161 is rescinded.

(g) Any references to the April 1, 2020, order entitled "Emergency Order Pursuant to MCL 333.2253 Regarding Executive Orders 2020-11, 2020-20, and 2020-21" now refer to this order. Consequently, violations of this order are punishable by a *civil* fine of up to $1,000, consistent with the amended schedule of fines, issued on May 27, 2020.

(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, and remains in effect through October 30, 2020. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date: October 5, 2020

Robert Gordon, Director

Michigan Department of Health and Human Services