STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

**Emergency Order Under MCL 333.2253 Regarding Executive Orders 2020-123 and 2020-108**

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 identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Gretchen Whitmer issued Executive Order 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, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33. More recently, on May 22, 2020, the Governor issued Executive Order 2020-99, again finding that the COVID-19 pandemic continues to constitute a disaster and emergency under the Emergency Powers of the Governor Act, and to the extent permissible, under the Emergency Management Act of 1976.

On June 15, 2020, the Governor issued Executive Order 2020-123, "Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic," which requires long-term care facilities to "report to DHHS all presumed positive COVID-19 cases in the facility together with additional data required under DHHS guidance." DHHS provided guidance to skilled nursing facilities (referred to as "nursing homes" in EO 2020-123 and in this Emergency Order) on May 20, 2020 that had explicit direction and resources to assist nursing homes to support meeting both the State of Michigan's COVID-19 reporting requirements and the CDC required reporting. On May 21, 2020, DHHS provided notice to these nursing homes via provider letter of the requirement to make daily reports of certain data elements. Among other things, this guidance requires nursing homes to report suspected and confirmed COVID-19 infections among residents and staff, total deaths among residents and staff, PPE and hand hygiene supplies, ventilator capacity and supplies, resident beds and census, COVID-19 testing capabilities, and staffing shortages. MDHHS has provided ongoing technical assistance, yet some nursing homes have not yet complied with these reporting requirements.

The pandemic persists and social distancing measures, including identification and isolation of persons affected by COVID-19 residing or working in nursing homes, are essential to control the pandemic. It is therefore imperative that nursing homes regularly and timely report COVID-19 suspected and positive cases, and all other data elements requested, to MDHHS. The timely reporting of this information enables MDHHS to take appropriate public health action to ameliorate the effect of an outbreak; help facilities with procuring PPE or other necessary hygiene supplies; and take any other necessary action to prevent the spread of the virus and to protect the health and safety of nursing home residents.

On May 29, 2020, the Governor issued Executive Order 2020-108, Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities, following upon three previous executive orders on the same subject, Executive Order 2020-7, 2020-37 and 2020-71. In order to continue to protect the health, safety and welfare of residents and staff, Executive Order 2020-108 limits who may enter a nursing home, which has resulted in hardships for residents and their families not being able to have in-person visits. Detection of COVID-19-positive persons living and working in nursing homes is essential to controlling the pandemic because it facilitates identification and

enables isolation of COVID-19-positive persons to prevent the transmission of the virus to others. Therefore, the ability to reopen nursing homes for resident family and friend visitation will continue to be delayed without robust testing of residents and staff. The Center for Medicare & Medicaid Services published guidance to states for safe reopening of long-term care facilities on May 18, 2020, which recommends testing of residents and staff through all phases of re-opening. As such, this emergency order requires nursing homes to test all residents and staff for COVID-19,to begin as soon as practicable and not later than June 29, 2020. All staff working for hospice facilities licensed as nursing homes must also be tested at baseline and appropriate intervals to help control and prevent the spread of COVID-19 and, as such, are also included in this Emergency Order.

In light of the above and pursuant to section 2253 of the Public Health Code, I have concluded 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. The procedures and restrictions outlined in EO 2020-123 and 2020-108, are necessary to control the epidemic and protect the public health.

2. Immediately, every nursing home in Michigan must:

    a. report the data elements listed in the May 20 guidance document, or any subsequent guidance published on the same subject. A list of required data elements is attached to this order.
    b. report the required data elements daily by 12pm in EMResource as highlighted in the May 21, 2020 letter to providers (L20-32).

3. Testing.

    a. The State of Michigan will provide testing support for nursing homes, as capacity allows, and assist facilities in identifying other sources of testing capacity as needed.

    b. Consistent with MDHHS Skilled Nursing Facility Testing guidance issued on June 15, 2020, all nursing homes must conduct COVID-19 diagnostic testing as follows (obtaining consent of the individual or other person legally authorized to make medical care decisions for the individual):

        i. Initial testing of all residents and staff;
        ii. Testing of all new or returning residents during intake unless tested in the last 72 hours;
        iii. Testing any resident or staff member with symptoms or suspected exposure;
        iv. Weekly testing of all residents and staff in facilities with any positive cases among residents or staff, until 14 days after the last new positive;
        v. Testing of all staff in Regions 1 through 5 and 7, at least once between the date of this order and July 3, 2020;
        vi. Weekly testing of all staff in regions of medium or higher risk on the MI Safe Start Map

c. Hospice facilities licensed by the state as a nursing home must test all staff at the same intervals of nursing home staff, and may test a hospice patient with consent of the individual or other person legally authorized to make medical care decisions for the individual.

d. Following a positive test of a staff member or resident, nursing homes and hospice facilities must take all necessary precautions in accordance with relevant guidance from the Centers for Disease Control and Prevention ("CDC") to prevent transmission of the Covid-19 virus, including excluding employees with COVID-19 from work until they have met all return to work criteria established by the CDC.

e. As soon as practicable and no later June 22, 2020, nursing homes must complete a plan for conducting testing consistent with section 3(a) of this order. Such plans shall, at a minimum, identify a schedule for actions; laboratories or hospitals with which the facilities will partner; support needed from the state (which must be requested via email to MDHHS-LTCRequest@michigan.gov no later than June 22, 2020); and a procedure for addressing residents who decline or are unable to be tested, as well as a procedure for how employees who refuse a test without medical justification and documentation will avoid contact with nursing home residents. Such plans shall be made available to DHHS, LARA, or members of the public upon request.

f. Nursing homes must begin executing on their plans as soon as practicable and no later than June 29, 2020. A nursing home that requests MDHHS assistance to comply with this order by June 22, 2020, as described in section 3(e) of this order, does not violate this order if it does not receive such assistance and cannot comply for reasons beyond its control (e.g. inadequate testing supplies). Nursing homes must report to MDHHS within 24 hours of their known inability to comply with their testing plan. For nursing homes that report inability to comply in this manner, MDHHS may determine that the nursing home cannot comply with this order for a reason beyond its control. A nursing home that receives such a determination from MDHHS will not be in violation of this order.

4. The procedures and restrictions outlined in EO 2020-123 and EO 2020-108 are hereby incorporated into this order and shall remain in place until this Emergency Order is lifted.

5. Failure to comply with this order may result in the issuance of a civil monetary penalty under the authority of MCL 333.2262. A civil monetary penalty issued under this section does not limit the Medicaid Services Administration's authority or responsibilities pursuant 42 CFR 488.426 nor its authority under MCL 400.111 et seq related to its authority to stop or hold Medicaid payments, or to summarily suspend or terminate a Medicaid provider's enrollment for the same or similar infractions.

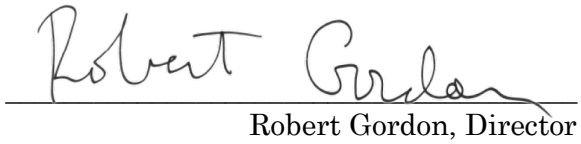
6. DHHS will refer any known violation of this order by a nursing home to LARA. DHHS will also report to LARA whether a penalty pursuant to paragraph 6 was or will be assessed to the nursing home for noncompliance with this order. This order does not limit or hinder LARA's authority and discretion related to its own authority to pursue additional enforcement actions as it determines appropriate.

7. Consistent with MCL 333.2263, any appeals of civil monetary citations issued under this order in accordance with the schedule of fines set forth in related emergency rules may be heard by the Michigan Office of Administrative Hearings and Rules.

8. 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 until lifted.

Date: June 15, 2020



Robert Gordon, Director
Michigan Department of Health and Human Services

REQUIRED REPORTING DATA ELEMENTS FOR NURSING HOMES AS OF MAY 22, 2020

Admissions
Resident Confirmed COVID-19
Resident Suspected COVID-19
Total Deaths
COVID-19 Deaths
All Beds
Current Census
Resident COVID-19 Testing
Staff Confirmed COVID-19
Staff Suspected COVID-19
Staff COVID-19 Deaths
Shortage Nursing Staff
Shortage: Clinical Staff
Shortage: Aide
Shortage: Other Staff/Fac Personnel
Current N95 Supply
Current Surgical Masks Supply
Current Eye Protection Supply
Current Gown Supply
Current Gloves Supply
Current Hand Sanitizer Supply
Vent Dependent Unit/Beds
Mechanical Ventilators
Mechanical Ventilators in Use
Current Ventilator Supplies
Total Admissions Cumulative
Total Deaths Cumulative
Total Resident C-19 Deaths Cumulative
Total Resident C-19 Positive Cumulative
Total Staff Confirmed C-19 Cumulative
Total Staff COVID-19 Deaths Cumulative
Number of Isolation Beds
Recovered Residents Discharged
Recovered Residents
Resident C-19 Negative
Resident C-19 Pending
Transfers to Hospital Cumulative
Transfers to Regional Hub Cumulative
Number of Gloves
Number of Cloth Face Coverings
Number of Sterile Gloves
Number of N95 Respirator Masks
Number of Surgical Masks/Facemasks
Number of Surgical Isolation Gowns
Number of Face Shields
Number of Goggles